No. 73-1888

In the Supreme Court of the United States

OCTOBER TERM, 1973

Supreme Court, U. S.
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UNITED STATES OF AMERICA, PETITIONER

v.

STATE OF ALASKA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*) is not yet reported. The memorandum opinion of the district court (App. B, *infra*) is reported at 352 F. Supp. 815. The findings of fact and conclusions of law of the district court (App. C, *infra*) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 1974 (App. D, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

The case involves a determination whether the waters of Cook Inlet in Alaska are historic inland waters under principles of international law. If they are, the State of Alaska has exclusive jurisdiction over the waters of and lands beneath the Inlet as against the United States and foreign nations, and it would be free to proceed with a proposed sale of oil and gas leases covering submerged lands more than three miles from the shore of Cook Inlet. If they are not historic inland waters, the portions of the Inlet more than three miles from the shore are high seas and the submerged lands are part of the Outer Continental Shelf as to which Alaska would have no authority to make the proposed leases since any leasing authority would be in the United States.

The following questions are presented:

1. Whether, despite the absence of any explicit claim to Cook Inlet as inland waters or of any sovereign acts interfering with the navigational rights of foreign nations to innocent passage therein, there has been a sufficient and continuous exercise of sovereignty to establish historic title to Cook Inlet as inland waters.

2. Whether, despite the absence of positive approval or affirmative acquiescence by foreign nations in the exercise of sovereignty over the waters of Cook Inlet as if inland waters, the nonopposition of foreign nations was sufficient acquiescence to establish a claim to historic title.

3. Whether repeated disclaimers of sovereignty over Cook Inlet by the United States should not have been given their normally conclusive effect (a) where the court of appeals found that the evidence presented "close" questions as to the legal inferences to be drawn as to whether historic title had previously ripened, or (b) because the district court found the disclaimers to be of "low reliability" after investigating the circumstances of their preparation.

4. Whether the "clearly erroneous" test governed the court of appeals' review of the district court's resolution of questions of international law and other legal issues in this case.

STATUTES INVOLVED

Sections 2, 3, 4 and 9 of the Submerged Lands Act of 1953, 67 Stat. 29, *et seq.*, 43 U.S.C. 1301, 1302, 1311, 1312, provide in relevant part as follows:

> SEC. 2. When used in this Act—
>
> (a) The term "lands beneath navigable waters" means—
>
> (1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the

Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open

sea and the line marking the seaward limit of inland waters;

* * * * *

SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources * * *.

* * * * *

SEC. 4. SEAWARD BOUNDARIES.—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its

coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

* * * * *

SEC. 9. RESOURCES SEAWARD OF THE CONTINENTAL SHELF.—Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

STATEMENT

This case presents important questions concerning the proper legal standards governing the application of principles of international law that control the determination of conflicting claims by the United States

and the State of Alaska as to the boundaries of the United States seaward of Alaska and ownership of offshore lands under the waters of Cook Inlet.

International law recognizes a threefold division of the sea: (1) "inland" or "internal" waters, consisting of bodies of water, such as bays, within the land territory of a nation, and over which it may exercise complete sovereignty, including the right to exclude foreign vessels; (2) the "territorial" or "marginal" sea, consisting of the waters within a specified distance seaward (three miles for the United States) of the coast and inland waters of a nation, and over which it may exercise complete sovereignty, except that foreign vessels have the right of "innocent passage" through such waters upon observance of special regulations concerning navigation, customs and the like; and (3) the "high seas," lying seaward of the territorial sea, as to which a nation may not normally exercise sovereignty with regard to foreign vessels or foreign nationals (although it may as to its own nationals).[1] *United States* v. *Louisiana*, 394 U.S. 11, 22-23. See generally I Shalowitz, *Shore & Sea Boundaries* 22-25 (1962).

In the Submerged Lands Act of 1953 (67 Stat. 29, 43 U.S.C. 1301, *et seq.* ("the Act")), Congress re-

[1] In the portion of the high seas adjacent to the territorial sea, and known as the "contiguous zone," a coastal nation may exercise control for certain special purposes. See generally 1 Shalowitz, *Shore & Sea Boundaries* 238-241 (1962). Within that zone the United States has established exclusive fisheries jurisdiction between three and twelve miles from its coast line. 16 U.S.C. 1091, *et seq.*

linquished to the states the United States' interest in lands beneath navigable waters within state "boundaries" (43 U.S.C. 1311(b)), and confirmed to each state admitted subsequent to the formation of the Union a seaward boundary of three geographic miles from its "coast line" (43 U.S.C. 1312), the latter term being defined with reference to the seaward limit of "inland waters." 43 U.S.C. 1301(c). The Act left unaltered the rights of the United States to the natural resources in the portions of the Continental Shelf lying seaward and outside of the seaward boundaries of the states (43 U.S.C. 1302), which submerged lands are referred to as the Outer Continental Shelf. 43 U.S.C. 1331(a).

Although the Act does not define "inland waters," this Court has held that the definition to be used in applying the Act is that subsequently adopted in the Convention on the Territorial Sea and the Contiguous Zone (T.I.A.S. No. 5639). *United States* v. *California*, 381 U.S. 139, 161-167; *United States* v. *Louisiana*, *supra*, 394 U.S. at 32-35. In brief, Article 7 of the Convention, dealing with bays, sets forth a rule under which the width at the closing line of a bay cannot exceed 24 miles. See *United States* v. *California*, *supra*, 381 U.S. at 169, n. 36. This limitation is inapplicable, however, to so-called "historic" bays. 381 U.S. at 169 n. 36, 172-175.

The Convention does not define "historic" bays or inland waters, but this Court has adopted the general principles of international law that govern the definition of such historic waters, and has acknowledged that there is general agreement on three criteria: (1) exercise of authority over the area by the Nation claiming the right; (2) continuity of the exercise of this authority for a considerable time; and (3) the acquiescence of foreign nations in the exercise of authority. *United States* v. *Louisiana*, *supra*, 394 U.S. at 23-24, 74-75; see *United States* v. *California*, *supra*, 381 U.S. at 172.

Although Alaska was not admitted to the Union until January 3, 1959, and hence was not a "state" in 1953 for purposes of the Act (43 U.S.C. 1301(g)), the Alaska Statehood Act provided that the Submerged Lands Act shall be applicable to Alaska and that Alaska "shall have the same rights as do existing States thereunder." Section 6(m), 72 Stat. 343, 48 U.S.C. ch. 2, note.[2]

Cook Inlet is a deep penetration into the Alaskan coast line, at the upper end of which is Anchorage. (A map showing Cook Inlet and the area in dispute is set forth at Appendix J, *infra*.) In March 1967, the State of Alaska offered 2,500 acres of submerged lands in lower Cook Inlet for a competitive oil and gas lease sale. This tract is located more than three geographic miles both from the shore of Cook Inlet and from an imaginary 24-mile line drawn across

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[2] The Statehood Act, enacted July 7, 1958, provided that the "State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska." Section 2, 72 Stat. 339, 48 U.S.C. ch. 2, note.

the Inlet at Kalgin Island. The United States contends that that line marks the seaward limits of the portion of Cook Inlet that may be regarded as inland waters because the closing line between the natural headlands at the lower end of the Inlet is 47 miles long. In short, the tract is in an area of lower Cook Inlet that the United States considers to be high seas.

Accordingly, on March 20, 1967, the United States commenced this action in the United States District Court for the District of Alaska to quiet title and for injunctive relief, on the ground that Alaska is not entitled to lease areas of high seas. Alaska contended, in response, that all of the waters in Cook Inlet are "historic" inland waters, so that it has title to the submerged lands in the entire Inlet. The parties compiled a substantial but essentialy undisputed factual record bearing on the controlling question [3] whether Cook Inlet is historic inland waters.

The district court concluded that, for purposes of the governing international law, various acts occurring when Russia owned the territory of Alaska, as well as acts taken by the United States (through statutes, regulations and acts of its employees) and the State of Alaska, constituted the exercise of sovereignty over lower Cook Inlet, and that various acts or omissions of foreign nations constituted acquies-

[3] Because the width of the Inlet at its headlands exceeds 24 miles, it is undisputed that the portions of the Inlet in question are inland waters only if the Inlet constitutes an historic bay.

cence in those exercises of sovereignty. The district court held, therefore, that all of the waters of Cook Inlet are historic inland waters, although it did not specify when that historic title ripened (see p. 15, n. 10, *infra*). In reaching this result the court disregarded repeated disclaimers by the United States, first issued prior to this litigation, that it did not regard Cook Inlet as within its jurisdiction, the court having concluded that the extent of research underlying the disclaimers made them of "low reliability" (App. B, *infra*, p. 12a; App. C, *infra*, pp. 45a-47a).

On appeal, the United States did not challenge the factual findings made by the district court.[4] Rather, it contended that, in determining that sovereignty had been continuously exercised over Cook Inlet and that foreign states had acquiesced in the exercise of such sovereignty, the district court had attributed improper legal significance to various events which indisputably occurred—in other words, that the court had applied erroneous legal standards. In addition, the United States contended that the district court erred in failing to regard as legally conclusive the United States' disclaimers of sovereignty over Cook Inlet. Without discussing any of the legal issues raised by the United States, the court of appeals af-

[4] The United States did challenge the court's refusal to make certain requested findings concerning the extent of foreign fishing in Cook Inlet by foreign vessels and the government's conclusion that such fishing could not be prohibited under international law. Since the evidence was not in dispute, the court presumably considered these matters to be legally immaterial.

firmed *per curiam* on the ground that the district court's "findings" were not "clearly erroneous" (App. A, *infra*, pp. 5a-6a).

On May 14, 1974, on the government's motion, the court of appeals recalled its mandate to the extent that it affects foreign fishing and navigation in the disputed area and stayed issuance of the mandate until June 13, 1974, or until final disposition of this case if a petition for a writ of certiorari is filed (App. E, *infra*). On June 14, 1974, the court of appeals extended the stay until June 23, 1974.

REASONS FOR GRANTING THE WRIT

1. The decision of the courts below,[5] in its legal conclusion that various acts constituted the exercise of sovereignty sufficient to establish historic title to Cook Inlet as inland waters, conflicts with this Court's decisions in *United States* v. *California, supra,* and *United States* v. *Louisiana, supra,* setting forth the legal principles applicable to a claim that a body of water is an historic bay or inland waters for purposes of the Submerged Lands Act. The mere exercise of governmental authority to some extent or at some time is not sufficient to support such a claim. Rather, there must have been such an exercise of sovereignty as could be consistent only with treatment of the waters as inland waters, rather than as territorial sea. *United States* v. *Louisiana, supra,* 394 U.S. at 24 n. 28, 25-26 n. 30. The crucial test in assessing

[5] Because only the district court specifically addressed the asserted acts of sovereignty, we shall refer to the particular determinations of that court.

the purported exercise of sovereignty, accordingly, is whether the claimant interfered with the right of innocent passage of foreign vessels, for if it allowed their innocent passage the waters would not be inland waters. *Id.* at 26, n. 30. Similarly, an exercise of sovereignty that is consistent with treatment of the waters as a territorial sea or the high seas (see pp. 13-17, *infra*) is of no legal significance in establishing a claim that the waters are inland waters. *Id.* at 25-26.[6]

Significantly, Alaska introduced no evidence, and the district court here made no finding, that there had ever been any governmental interference with the right of innocent passage by foreign vessels or foreign nationals in Cook Inlet. The conclusion of the courts below that Cook Inlet is an historic bay rests, instead, upon facts, events and conduct that are irrelevant under *United States* v. *Louisiana, supra.*

(a) The most prevalent legal error of the district court was to rely upon actions of the United States (or of Alaska) which were consistent with treatment of the waters of Cook Inlet as high seas, or at most territorial sea, rather than as internal waters. This is the case as to a variety of Acts of Congress, Executive Orders, and agency regulations governing fishing in the waters of Alaska,[7] as well as the patrol

[6] These principles are discussed and applied in the report of the Special Master in *United States* v. *Florida,* No. 52 Original, submitted February 19, 1974, pertinent portions of which are set forth in Appendix F, *infra.*

[7] This comment applies to the court's reliance upon seizure of an American vessel, The Kodiak, in 1892 for violation of

of the disputed waters by United States vessels.[8] As we have noted (see p. 13, *supra*), regulation of fishing, even by foreigners, is permissible in the territorial sea and beyond, and such conduct is irrelevant to a claim of historic title to inland waters. *United States* v. *Louisiana*, *supra*, 394 U.S. at 25-26.

(b) The court relied upon acts taken by the United States (and Alaska) to enforce laws in Cook Inlet with respect to American vessels or citizens,[9] although only the exercise of authority with respect to foreign nationals or foreign vessels is relevant in establishing historic title under international law. See, *e.g.*, Appendix F, *infra*.

(c) The court relied upon events occurring subsequent to the time (never clearly specified) when it

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Rev. Stat. 1956 (App. C, *infra*, pp. 27a-28a), enactment of the Alien Fishing Act of 1906 (34 Stat. 263, 48 U.S.C. (1958 ed.) 243) (App. C, *infra*, p. 28a) and the White Act of 1924 (43 Stat. 464, 48 U.S.C. (1958 ed.) 221) (App. C, *infra*, p. 30a), promulgation of an Executive Order by the President, November 3, 1922, No. 3752 (PX 21), establishing the Southwestern Alaska Fisheries Reservation (App. C, *infra*, p. 29a) and of regulations by the Secretary of Commerce implementing these fishing controls (App. C, *infra*, pp. 30a-31a) and the enforcement of these laws and regulations at various times in the 1950's (App. C, *infra*, pp. 31a-34a).

[8] A nation may patrol even the high seas in the enforcement of international agreements or of its own laws against its own nationals, without prejudicing the rights of foreign nationals with respect to the waters in question.

[9] This is so as to the court's reliance upon seizure of The Kodiak in 1892 (App. C, *infra*, pp. 27a-28a) and enforcement of fishing regulations by the United States in the 1950's and by Alaska in 1970 (App. C, *infra*, pp. 31a-34a, 39a).

found that historic title had already "ripened," [10] even though the court elsewhere indicated that such post-ripening events were not "relevant" (App. C, *infra*, pp. 45a, 53a, 54a).

(d) The court relied upon the isolated act of a private citizen,[11] which this Court has said cannot establish sovereignty. *United States* v. *Louisiana*, *supra*, 394 U.S. at 76, n. 103.

(e) The court relied upon actions of departments of the government that have neither the authority nor the responsibility for designating or altering international boundaries,[12] although this Court has stated that actions by the departments not responsible for foreign relations are entitled to little weight

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[10] Thus, the court held that historic title had ripened at least prior to Alaska's statehood in 1959 (App. C, *infra*, p. 53a) and "probably" prior to certain instances of foreign fishing that began as early as 1946 (App. C, *infra*, p. 45a; PX 5, 78A), yet it found that the "clearest exercise" of sovereignty supporting Alaska's claim was the seizure of Japanese vessels in Shelikof Strait in 1962 (App. C, *infra*, p. 39a) and it also relied upon enforcement of Alaska's fishing regulations in 1970, while this case was pending (App. C, *infra*, p. 39a).

[11] The court relied upon the fact that in 1786 a Russian fur trader shot at an Englishman who was attempting to enter Cook Inlet (App. C, *infra*, pp. 25a-26a).

[12] This applies to the promulgation and enforcement of fisheries regulations by the Department of Commerce (App. C, *infra*, pp. 30a-31a), the order of the Secretary of Commerce to destroy certain maps prepared by the Tariff Commission showing penetration of the high seas into Cook Inlet (App. C, *infra*, p. 35a), and the preparation of special fisheries maps by the Department of the Interior showing the so-called Gharrett-Scudder baseline (App. C, *infra*, pp. 36a-37a).

in this area. See *United States* v. *California*, 332 U.S. 19, 39-40; cf. *United States* v. *California, supra*, 381 U.S. at 175, n. 49; *United States* v. *Louisiana, supra*, 394 U.S. at 30-32.

(f) The court relied upon actions taken by the State of Alaska with reference to waters outside of Cook Inlet,[13] although such actions would have been irrelevant in proving a claim by the United States against other nations to historic title to Cook Inlet. See *United States* v. *Louisiana, supra*, 394 U.S. at 77-78.

(g) The court relied upon events occurring after the United States had first disclaimed historic title to Cook Inlet as internal waters,[14] although this Court has stated that such a disclaimer can be overcome only by evidence making it clear beyond doubt that historic title had ripened *prior to* the disclaimer. *United States* v. *Louisiana, supra*, 394 U.S. at 77, n. 104. See generally pp. 18-21, *infra*.

(h) The court relied upon enforcement actions by the United States (and Alaska) which resulted in dismissals, rather than imposition of sanctions,[15]

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[13] The Shelikof Strait incident, strongly relied upon by the court (App. C, *infra*, pp. 39a-42a), involved seizure of Japanese vessels in Shelikof Strait, in the Uyak Section, Karluck District, Kodiak area (Exh. IJ), the nearest portion of which is about 75 miles from Cook Inlet (see App. J, *infra*).

[14] Thus, although the first disclaimer was made in 1962, and it was reiterated in 1969, the court relied upon Alaska's enforcement of its fishing regulations in 1970 (App. C, *infra*, p. 39a).

[15] This applies to the seizure of The Kodiak (App. C, *infra*, pp. 27a-28a) enforcement of United States fishing regulations

although this Court has specified that proceedings resulting in dismissals are of dubious value as assertions of sovereignty. *United States* v. *California, supra*, 381 U.S. at 174.[16]

2. In concluding that the facts established in the record constituted the requisite "acquiescence" by foreign nations in a claim of sovereignty by the United States (or Alaska) over Cook Inlet as inland waters, the decision of the courts below conflicts with this Court's decisions in *United States* v. *California, supra*, 381 U.S. at 172, and *United States* v. *Louisiana, supra*, 394 U.S. at 23.

Although some authorities hold that the mere absence of opposition by foreign states, as distinguished from their acquiescence, is sufficient to establish a claim to historic title, it is the position of the United States both in its foreign affairs and in this litigation that acquiescence of foreign nations in the exercise of sovereignty affecting them is required, and that it must be established by positive proof of approval of a claim of sovereignty before historic title can be established. In *United States* v. *Louisiana, supra*, 394 U.S. at 24, n.27, this Court took note of the

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against Americans (App. C, *infra*, pp. 31a-34a), with two exceptions, and enforcement of Alaskan fishing regulations against the Japanese in Shelikof Strait (App. C, *infra*, pp. 39a-42a) and against Americans in Cook Inlet (App. C, *infra*, p. 39a).

[16] Because of its reliance upon acts that were not legally relevant exercises of sovereignty, the court also erred in concluding as a matter of law that sovereignty had been exercised "continuously" for a sufficiently "considerable" period of time. See p. 9, *supra*.

split in viewpoints and unequivocally reiterated the position stated in *United States* v. *California*, *supra*, 381 U.S. at 172, that there must be "acquiescence." Although the district court purported to apply the test of acquiescence here, the facts relied upon (App. C, *infra*, pp. 43a-45a)—primarily the absence of substantial amounts of foreign fishing in Cook Inlet—constitute no more than absence of opposition. Because the United States has never by proclamation or legislation expressly claimed Cook Inlet as internal waters, there has been no occasion for foreign nations generally to signify their opposition, and their silence is thus immaterial.[17]

Moreover, the court's discussion of the "attitude of foreign nations" ignored the fact that, immediately following the seizures of the Japanese vessels in Shelikof Strait, the Japanese Government sent a diplomatic note of protest to the United States Department of State (App. C, *infra*, p. 41a), claiming the right to fish in Shelikof Strait and disassociating itself from a commitment made to Alaskan authorities by the private fishing company to abstain from fishing in the Strait or in Cook Inlet.

3. In 1962 the Legal Adviser of the Department of State specifically disclaimed historic title to Cook Inlet, stating that an extensive search of the records of that Department and of the Archives had revealed "no evidence that the United States has ever at any

[17] The court's reliance upon Canada's lack of opposition to the Gharrett-Scudder line (see p. 15, n. 12, *supra*) was legally erroneous because the map was accompanied by a disclaimer (PX 91), which made any protest unnecessary.

time claimed the waters of Cook Inlet as internal waters of the United States" (PX 58, p. 2). A subsequent letter from the Legal Adviser in 1969 reiterated the assertion that "[i]n its conduct of United States foreign relations the Department of State does not consider that Cook Inlet is a historic bay" (PX 69, p. 3).[18] The failure of the district court to give conclusive effect to the United States' disclaimer of sovereignty over lower Cook Inlet conflicts with the decisions of this Court in *United States* v. *California*, *supra*, and *United States* v. *Louisiana*, *supra*.

In *United States* v. *California* the position taken by the United States in the litigation was treated by this Court as a disclaimer of jurisdiction which should ordinarily be treated as "decisive," except perhaps in cases which "might arise in which the historic evidence was *clear beyond doubt*." 381 U.S. at 175 (emphasis supplied). In other words, a disclaimer is in large measure a foreign policy determination which should be treated as "conclusive" unless it would "prevent recognition of a historic title which may already have ripened because of past events * * *." *United States* v. *Louisiana*, *supra*, 394 U.S. at 77, n.104.

One of the reasons the district court refused to regard the United States' disclaimers as conclusive was

[18] The United States also disclaimed historic title to Cook Inlet in 1971, when the Department of State distributed to foreign nations an official baseline chart in which the disputed area is shown as being beyond the United States' coast line (PX 73; see App. C, *infra*, p. 46a).

that it concluded that the evidence was "clear beyond doubt" that "historic title had already ripened" (App. C, *infra*, pp. 45a, 53a). As we have shown, however, the court applied erroneous legal standards in assessing the historic evidence; properly viewed it was at best "questionable" [19] (*United States* v. *California*, *supra*, 381 U.S. at 175) and hence insufficient either to establish a prior ripening of historic title or to overcome the effect of the disclaimers.

The district court also based its disregard of the disclaimers upon its conclusion that they were "hastily prepared" and "based on questionable research" (App. C, *infra*, pp. 45a-47a). In thus going behind the face of the disclaimers, the court relied on grounds not approved by this Court as a basis for refusing to treat a disclaimer as conclusive.[20] Cf. *United States* v. *Morgan*, 313 U.S. 409, 422. Indeed, the disclaimers here reflect a foreign policy judgment normally beyond the scope of judicial review. See, *e.g.*, *Chicago & S. Air Lines, Inc.* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111-112; *United*

[19] Indeed, the court of appeals observed "that the evidence was in conflict and that the question of determining the ultimate inferences to be drawn was close" (App. A, *infra*, p. 5a).

[20] Here, as in *California*, there is no showing that the disclaimer represented an *ad hoc* divergence from the "firm and continuing international policy [of the United States]," motivated "solely to gain advantage" in the litigation. *United States* v. *Louisiana*, *supra*, 394 U.S. at 74, n. 97. Indeed, the record shows that the disclaimer here is entirely consistent with the position taken internationally by the United States in similar circumstances (see, *e.g.*, PX 69, 91, 93).

States v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-322, 330-331.[21]

4. The court of appeals erred in applying to the legal issues raised on appeal the test of whether the district court's determinations were "clearly erroneous" (App. A, *infra*, p. 5a). Nearly all of the questions raised on appeal involved, not the correctness of the district court's findings as to factual issues on which there was conflicting evidence, but rather the legal significance to be attached to undisputed facts. Such issues present questions of law, which the court of appeals should have decided. Indeed, when precisely analogous questions have been presented to this Court on review of the report of a special master, the Court has decided those legal questions itself, and has not merely accepted the master's resolution if it was not clearly erroneous. *E.g.*, *United States* v. *California*, *supra*, 381 U.S. at 174-175.

5. It is particularly important that this Court review a court of appeals decision, such as this one, which departs from this Court's prior decisions with respect to a matter having important foreign policy

[21] The courts are ordinarily bound by the determinations of the Executive as to the territorial extent of United States sovereignty. See *Jones* v. *United States*, 137 U.S. 202; *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377, 380. The disclaimers here represent "the considered decision of the United States" as to the extent of its border, which it would be "inappropriate" for the courts to review or overturn. *United States* v. *Louisiana*, *supra*, 394 U.S. at 73. See also, *e.g.*, *Ex Parte Peru*, 318 U.S. 578, 588-589.

and international consequences. The practical effect of the decision below, in giving Alaska jurisdiction over all of Cook Inlet, would be comparable to an assertion by the United States to other nations that the United States now regards all of Cook Inlet as internal waters. See *United States* v. *California*, *supra*, 381 U.S. at 168. However, as stated in a letter of the Legal Adviser of the Department of State recommending that certiorari be sought in this case, that Department, after reviewing the findings of fact in this case, is of the opinion "that there is no evidence of any act which could establish a claim [to Cook Inlet as historic internal waters] based on the applicable international criteria" (App. G, *infra*, p. 69a). Moreover, the Department is "loath to make [such] an international assertion," thereby changing the position maintained by the United States internationally, because "[t]o do so could have serious adverse implications for our foreign relations" (*ibid.*) by making it more difficult to resist claims of other nations to extensions of their sovereignty and by impairing our existing rights to navigation and overflight (*id.* at 70a).

Affidavits submitted to the court of appeals in support of the government's motion to recall and stay the mandate (Apps. H, I, *infra*) provide striking examples of the serious threat that the court of appeals' decision has already posed for the foreign relations of the United States. Thus, if allowed to stand, the decision that Cook Inlet is inland waters could result in the nonrenewal of existing bilateral

fisheries agreements, create conflict between Canada and the United States with respect to Canada's assertion of fisheries jurisdiction, and, in all likelihood, seriously impair essential cooperation between the United States, Canada, and possibly other nations in ongoing law of the sea negotiations (*ibid.*).[22]

The decision below also has domestic consequences of great magnitude. It has been estimated that Cook Inlet will yield 1.6 billion barrels of oil and 11.7 trillion cubic feet of natural gas. The Department of the Interior estimates that the bonuses and royalties generated from such production will exceed one billion dollars. The decision below vests in Alaska the rights to all such resources under Cook Inlet, and deprives the United States of any interest in any portion of those resources. However, if the United States has jurisdiction over them Cook Inlet is not inland waters. See 43 U.S.C. 1302, 1331, *et seq.*

Finally, the types of conduct that occurred in Cook Inlet may also have occurred in other overlarge bays and baylike areas in Alaska and along the coasts of the United States.[23] Unless the conflict and un-

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[22] The United States has been able temporarily to prevent irreparable harm to these foreign relations interests by obtaining a recall and stay of the mandate of the court of appeals (App. E, *infra*).

[23] In hearings before the Senate Commerce Committee, the attorney who conducted the Cook Inlet trial for Alaska contended that the Alexander Archipelago was inland waters. His case was based on testimony of many of the same witnesses who testified at the Cook Inlet trial and upon the same type of conduct that the district court found sufficient to estab-

certainty created by the decision below as to the kinds of conduct that constitute sovereignty and acquiescence are resolved by this Court, Alaska and other littoral states may be encouraged to litigate similar historic claims in efforts to extend the United States' jurisdiction over coastal waters and thus to increase the states' Submerged Lands Act grants.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

WALLACE H. JOHNSON,
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JUNE 1974.

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lish Cook Inlet as historic inland waters. Hearings Before the Senate Commerce Committee on Provisional U.S. Charts Delimiting Alaskan Territorial Boundaries, 92d Cong., 2d Sess., Ser. No. 92-69, pp. 18, *et seq.*

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 73-2400

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

STATE OF ALASKA, DEFENDANT-APPELLEE

[March 19, 1974]

Appeal from the United States District Court for the District of Alaska

OPINION

Before: KOELSCH, CARTER and WALLACE, Circuit Judges

PER CURIAM:

The United States sued the State of Alaska to quiet title to the lower part of Cook Inlet located on the Alaska coast and to enjoin Alaska from offering oil and gas leases for sale in the area. The district court found in favor of Alaska. *United States* v. *Alaska*, 352 F.Supp. 815 (D. Alaska 1972). The United States appealed and we affirm.

In early 1967, Alaska offered to sell, at competitive bidding, an oil and gas lease to a tract of 2,500 acres of submerged lands located in lower Cook Inlet. The United States does not contest Alaska's right to the upper part of Cook Inlet. The tract in ques-

tion, however, is located more than 3 geographic miles seaward of the low-water line, the closing lines of rivers and small bays within Cook Inlet and the 24-mile fallback line drawn across the narrows at Kalgin Island. The essence of the controversy involves the proper location of the Alaska coastline. The United States would place the coastline at the 24-mile fallback line at Kalgin Island. Alaska would place it at the 47-mile opening of Cook Inlet extending from Cape Douglas through the Barren Islands to Point Gore. The significance of the placement of this line is that under the Submerged Lands Act of 1953 (43 U.S.C. §§ 1301-43), a state is entitled to the natural resources of the seabed and subsoil in waters up to 3 geographic miles seaward from the state's coast line at low tide or its functional equivalent as drawn by connecting the land openings of water inlets such as rivers and small bays. The waters landward from the line forming the functional equivalent of the coast line are inland waters belonging to the state and the 3-mile distance extends seaward from that line. Whether this line should be drawn at Kalgin Island (as the United States contends) or at Cape Douglas-Point Gore (as Alaska contends) will determine whether the area in question may be leased by Alaska. The pivotal question in this determination is whether this is a seabed over which there are "inland waters" as denominated in, but not defined by, the Submerged Lands Act. If so, Alaska is correct and the district court's judgment must be affirmed.

The Supreme Court has adopted the definition of inland waters as contained in the Convention on the Territorial Sea and the Contiguous Zone (T.I.A.S. No. 5639). *United States* v. *California*, 381 U.S. 139, 165 (1965). Article 7 describes inland bays; but Cook Inlet fails to meet the definition which requires a distance of no more than 24 miles between the natural entrance points of the bay. Cook Inlet is 47 miles wide at its natural entrance points. Nevertheless, the Court has recognized that whether or not a body of water is inland may depend upon historical as well as geographical factors. The Court has stated:

> Certain shoreline configurations have been deemed to confine bodies of water, such as bays, which are necessarily inland. But it has also been recognized that other areas of water closely connected to the shore, although they do not meet any precise geographical test, may have achieved the status of inland waters by the manner in which they have been treated by the coastal nation.

United States v. *Louisiana* (*Louisiana Boundary Case*), 394 U.S. 11, 23 (1969). Historic bays, which Article 7 exempts from the requirement of being no more than 24 miles between the natural entrance points, fall within this classification. As to such waters the Court in the *Louisiana Boundary Case* continued: "[I]t is generally agreed that historic title can be claimed only when the 'coastal nation has traditionally asserted and maintained dominion

with the acquiescence of foreign nations.'" 394 U.S. at 23, *quoting from United States* v. *California*, 381 U.S. 139, 172 (1965). As further guidance the Court noted with apparent approval:

> A recent United Nations study recommended by the International Law Commission reached the following conclusions:
>
> "There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient." Juridical Regime of Historic Waters, Including Historic Bays, [1962] 2 Y. B. Int'l L. Comm'n 1, 13, U. N. Doc. A/CN.4/143 (1962).

394 U.S. at 23-24 n.27. The district court correctly adopted and applied this three-pronged test. Having correctly applied the law, our sole remaining task is

to determine whether the facts found by the trial court were clearly erroneously. *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

The United States mounts a heavy attack, reviewing in detail evidence which it contends leads unquestionably to the conclusion that the waters involved are at the most territorial rather than inland. It has succeeded in demonstrating that the evidence was in conflict and that the question of determining the ultimate interferences to be drawn was close. But it failed to show the findings to be clearly erroneous. The trial judge received the testimony of hundreds of witnesses and examined volumes of documents. The clearly erroneous test applies to both. *W. S. Shamban and Co.* v. *Commerce and Industry Ins. Co.*, 475 F.2d 34 (9th Cir. 1973); *United States* v. *Ironworkers Local 86*, 443 F.2d 544, 548-49 (9th Cir.), *cert. denied*, 404 U.S. 984 (1971); *Lundgren* v. *Freeman*, 307 F.2d 104, 114-15 (9th Cir. 1962).

As the Court in the *Louisiana Boundary Case* has instructed, boundary disputes involving such complex and detailed evidence as has been presented in this case must be resolved by answering questions that are primarily factual. This task can best be done by the trier of fact who has heard the evidence in the first instance. The Court stated:

> Historic bays are not defined in the Convention, and the term therefore derives its content from general principles of international law. As the absence of a definition indicates, there is no universal accord on the exact meaning of his-

toric waters. There is substantial agreement, however, on the outlines of the doctrine and on the type of showing which a coastal nation must make in order to establish a claim to historic inland waters. But because the concept of historic waters is still relatively imprecise and *its application to particular areas raises primarily factual questions*, we leave to the Special Master —as we did in *United States* v. *California*—the task of determining in the first instance whether any of the waters off the Louisiana coast are historic bays.

394 U.S. at 75 (emphasis added and footnotes omitted).

As the law applied by the district court was correct and its findings were not clearly erroneous, we affirm.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A-45-67

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA, DEFENDANT

MEMORANDUM AND ORDER

The above cause, long standing in this district, was tried to the Court in January, 1972. The issues presented for the Court's determination are exceptionally complex. Literally hundreds of exhibits were received into evidence, which, together with the testimony of numerous witnesses and the voluminous trial and post trial briefs of the parties, have required the extensive attention of the Court. The cause has been under advisement since the end of July of 1972, when the final post trial brief was filed.

While the Court has spent considerable time with all aspects of the evidence as it relates to the legal issues, a discussion of only the major contentions is included here.

Both parties have submitted, pursuant to the Court's request, their proposed findings of fact, conclusions of law and judgment form. These, too, have been carefully considered by the Court.

In April of 1967 the State of Alaska offered in a competitive oil and gas lease sale a tract of submerged land located beneath lower Cook Inlet. A month later the United States disputed the ownership of the resources lying beneath lower Cook Inlet by commencing this action to quiet title.

The apportionment of subsurface resources between a littoral state and the United States has long been the subject of intensive litigation. In *United States* v. *California*, 332 U.S. 19 (1947) the Supreme Court held that rights to subsurface resources lying beneath the three mile territorial sea are vested exclusively in the United States. In response to that ruling, Congress enacted the Submerged Lands Act of 1953. 43 U.S.C. 1301. That act not only granted to a coastal state exclusive rights to subsurface resources located beneath the territorial sea, but it granted identical rights to subsurface resources located beneath inland waters. Unfortunately, Congress did not define "inland waters" as that term appeared in the Submerged Lands Act. It was not until *United States* v. *California*, 381 U.S. 139, at 164 (1965) that the term "inland waters" of the Submerged Lands Act was subject to judicial interpretation. In that case, the Court adopted the definitions of inland waters set forth in terms of international law in the Convention of the Territorial Seas and the Contiguous Zone (T.I.A.S. No. 5639).

The Convention established rules of international law for determining the location of the baseline from

which the territorial sea of a nation is measured. Waters located landward of such a baseline are to be considered inland waters of the coastal nation. Pursuant to the Submerged Lands Act, the resources underlying the waters located landward of such a baseline would be vested exclusively in the coastal state. The rule concerning inland bays is found in Article 7 of the Convention. Essentially the Convention sets forth a twofold requirement for a finding that a bay is a part of the inland waters of a littoral nation: (1) the indentation shall be of such curvature that its area is larger than the area of a semicircle whose diameter is a line drawn across the mouth of the indentation, and (2) the distance between headlands of the bay shall not exceed 24 miles. It is apparent that the latter requirement is not satisfied as to lower Cook Inlet. However, paragraph 6 of Article 7 of the Convention states that "the foregoing provisions shall not apply to so-called 'historic' bays."

It is that historic bay exception of the Convention which is the focus of the complex controversy presently before the court. If lower Cook Inlet is a historic bay within the meaning of the Convention, that body of water is thus inland water within the meaning of the Submerged Lands Act, with the result that the State of Alaska would have exclusive rights to the subsurface resources.

Since the Convention does not define the term "historic bays", resort must be made to general principles of international law. In *United States* v.

Louisiana, 394 U.S. 11, at 23 (1969), the Court footnoted with apparent approval a test for determining the existence of historic waters. The requirements were set forth in a United Nations study recommended by the International Law Commission:

> There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign states. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient. Juridical Regime of Historic Waters, Including Historic Bays, 2 Y.B. Int'l L. Comm'n 1, 13, U. N. Doc. A/CN.4/143 (1962) [hereinafter cited as Juridical Regime]

At this juncture it should be noted that the Supreme Court has imposed certain modifications to the application of general principles of international law used in the determination of historic waters.

The first modification pertains to the vantage point

to be assumed by a court in judging the facts concerning the status of a bay as historic waters. In *United States* v. *Louisiana*, 394 U.S., at 77, the Court indicated that such a controversy should be viewed as if the claim were being made by the United States and opposed by another nation.

The second modification concerns the degree to which a coastal state may rely on its own assertions of sovereignty over disputed waters to establish historic title. In *United States* v. *Louisiana*, *Id.* the Court made clear that state exercises of dominion, as distinguished from federal assertions of sovereignty, may properly be considered on the issue of historic title.

The third modification pertains to the legal effect of a disclaimer by the United States that disputed waters are historic waters. In *United States* v. *California*, 381 U.S., at 175, the Court ruled that a disclaimer by the United States was decisive in view of the "questionable evidence of continuous and exclusive assertions of dominion over the disputed waters." But the Court also stated at that point:

> We are reluctant to hold that such a disclaimer would be decisive in all circumstances, for a case might arise in which the historic evidence was clear beyond doubt. *Id.*

In *United States* v. *Louisiana*, 394 U.S., at 77, the Court elaborated on its position by stating:

> (I)t would be inequitable in adapting the principles of international law to the resolution of a domestic controversy, to permit the National

> Government to distort those principles, in the name of its power over foreign relations and external affairs, by denying any effect of past events.

In a footnote to that excerpt, the Court further limited the legal effect of a disclaimer:

> It is one thing to say that the United States should not be required to take the novel, affirmative step of adding to its territory by drawing straight baselines. It would be quite another to allow the United States to prevent recognition of a historic title which may already have ripened because of *past* events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States* v. *California*. *Id.*

The disclaimers in the instant case approach the impermissible contraction of authority cautioned against by the Supreme Court, especially in view of the clear evidence of continuous assertions of sovereignty over lower Cook Inlet. Considering the circumstances under which they were prepared, the court assigns a low reliability factor to the disclaimers. The first disclaimer was a letter from the Legal Advisor to the Secretary of State. The court finds the evidence to show the disclaimer to have been hastily prepared and based on questionable research. The second disclaimer was also a letter from the State Department. That disclaimer was prepared

two years after the commencement of this action, and was vulnerable to self-serving interests.

The final qualification concerns the quantum of proof required for a showing of historic title. The expression "clear beyond doubt", as it first appeared in *United States* v. *California*, 381 U.S., at 175, could very well not have been intended by the Supreme Court to establish such a high standard of proof in all cases. The context in which that phrase appeared pertained to the legal effect of a disclaimer by the United States in the face of questionable evidence of historic title. The context of this case is clearly distinguishable. Further, there is other language in that case which implies that no rigorous standard of proof is required to prove historic title. 381 U.S., at 174. Nor do the long respected commentators of international law appear to require a rigorous standard of proof. Juridical Regime 158. Despite this uncertainty over the burden of proof, this court will adhere to the higher standard of proof, for the reason the Court finds the State of Alaska has satisfied the requirements for establishment of historic title even under the more rigorous standard.

The first requirement for establishing historic title to disputed waters is the effective exercise of authority over the area by the nation claiming the historic right. Juridical Regime 80. The authority which a nation must exercise over a maritime area in order to be able to claim it as historic waters is sovereignty. *Id.* 85. It is not necessary that a

nation exercise all rights and duties which are included in the concept of sovereignty. *Id.* 88. Among the acts by which sovereignty is exercised are those which deny to foreign fishing vessels the right to fish in the disputed waters:

> What acts under municipal law can be cited as expressing its desire to act as a sovereign? . . . There are some acts which are manifestly not open to any misunderstanding in this regard. The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign. *Id.* 90.

The commentators of international law appear to be in full agreement that the sovereignty must be effectively exercised. That is, the intent of the nation making the claim to historic title must be expressed by deeds and not merely by proclamations. *Id.* 98. However, it is not necessary for the nation making the historic claim to undertake particular acts of enforcement if the laws and regulations were respected by foreign nations. *Id.* 99. It is only required that if an act of enforcement was necessary to maintain sovereignty, that such action was taken. *Id.*

The State of Alaska has produced evidence which establishes clear beyond doubt that there has been such sufficient exercise of authority over lower Cook Inlet.

The earliest clear assertion of sovereignty over the disputed waters occurred in 1906 when Congress

enacted the Alien Fishing Act. Act of June 14, 1906, ch. 3299, 34 Stat. 263. That Act prohibited fishing by aliens in the waters of Alaska under the jurisdiction of the United States, and permitted search and seizure of foreign vessels engaging in the proscribed activity. Testimony of witnesses who enforced that Act in Cook Inlet established that all of Cook Inlet landward of a line extending from Cape Douglas to Point Gore, including the Barren Islands, was treated as part of the waters of Alaska. The witnesses testified further that they did not recall ever seeing any foreign fishing vessels in lower Cook Inlet, and if they had, they would have taken affirmative action.

Another assertion of sovereignty occurred on November 3, 1922, when President Harding created the Southwestern Alaska Fisheries Reservation by Executive Order. The administrative regulations promulgated pursuant to the executive order described Cook Inlet as that area "north of the latitude of Cape Douglas . . . including the Barren Islands . . . and all the shores and waters of Cook Inlet." Dept. of Commerce Cir. No. 251, p. 8, 9th ed. (Jan. 9, 1923). The evidence was clear that lower Cook Inlet was patrolled, and that several acts of enforcement occurred involving American fishing vessels.

The effort which began in 1922 culminated in 1924, when Congress enacted the White Act. Act of June 6, 1924, ch. 272, 43 Stat. 464. That Act delegated to the Secretary of the Interior the authority to prescribe a wide scope of fishery regulations for the

waters of Alaska. The White Act did not substantially change the description of Cook Inlet, Cook Inlet was still defined as the area located landward of the Cape Douglas-Point Gore line, including the Barren Islands. Dept. of Commerce, Laws and Regulations for Protection of Fisheries of Alaska, p. 19 (Dec. 2, 1924). As was the case under the Alien Fishing Act, the testimony of witnesses who enforced the White Act indicated that lower Cook Inlet was regularly patrolled, and that numerous acts of enforcement of fishing regulations occurred in the same area over the years.

As a consequence of the enactment of the Alaska Statehood Act, both the Alien Fishing Act and the White Act were superseded. The result was that on January 1, 1960, the State of Alaska assumed control of the fisheries formerly within the jurisdiction of the federal Acts. The evidence indicates that the description of Cook Inlet under the Alaska Commercial Fishing Regulations since statehood has not substantially changed from the definition under the federal Act. Under the Alaska regulations, Cook Inlet is comprised of the waters located inland from the line drawn from Cape Douglas to Point Gore, including the Barren Islands. 5 AAC 109.02 (1959).

The clearest exercise of sovereignty occurred in the Shelikof Strait in 1962. The Japanese fishing vessel *Banshu Maru* and others had apparently intruded into the southernmost portion of lower Cook Inlet near the Barren Islands for a few hours and then proceeded into the Shelikof Strait. On a prior

occasion an official of the State Department indicated to the Governor of Alaska the federal government's unwillingness to act, but encouraged action by the State of Alaska. Consequently the State of Alaska effected the seizure and arrest of the *Banshu Maru* in Shelikof Strait. Although the evidence is conflicting, there is no clear evidence that the correctness of the act was officially denied or admitted by the United States.

The second requirement for establishing historic title to disputed waters is the continuity of the exercise of authority over a period of time sufficient to create a usage. Juridical Regime 101. No precise length of time is necessary to create a usage on which historic title is based. *Id.* 104. Since there are no precise time-limit criteria, the lapse of time necessary to permit emergence of historic title is a matter of sound judgment. *Id.* 123, 131.

The evidence produced by the State of Alaska proves clear beyond doubt that the exercise of authority over lower Cook Inlet has existed without interruption from 1906, and very possibly earlier, until the time this dispute arose. The legislative enactments have been applied consistently and without interruption for a sufficient time to give rise to a usage over the disputed waters.

The final requirement for establishing historic title is the attitude of foreign nations. The commentators of international law do not agree on the precise attitude required. Most appear to require that the exercise of authority by the coastal nation be con-

ducted under the general toleration of the community of nations, although others indicate that acquiescence is the required attitude. Juridical Regime 132. The Supreme Court has used language which indicates that acquiescence is the required standard, *United States* v. *California*, 381 U.S., at 172, but there is no clearly binding authority on the point. Since under the facts of this case the requirement has been satisfied even under the higher standard of acquiescence, the distinction between toleration and acquiescence becomes a matter of academic significance.

Under the particular facts and evidence of this case, the court finds it to be clear beyond doubt that the community of nations has acquiesced in the emergence of historic title of lower Cook Inlet. The testimony of witnesses who have been charged with enforcement of the fishery regulations over lower Cook Inlet has clearly indicated the general absence of foreign fishing vessels over the years. It should be noted that after the *Banshu Maru* incident, the Japanese and the State of Alaska agreed that in the future there would be no attempt by the Japanese to fish the waters in question. To date the agreement has been carefully respected by the Japanese. Although, since the *Banshu Maru* incident, there have been intrusions into other Alaskan waters by Japanese, Soviet, Korean and Canadian vessels, there have been no such documented intrusions into lower Cook Inlet.

Conflicting evidence exists as to a few isolated instances of earlier intrusions into Cook Inlet by Canadian halibut fishing vessels. Considering the entire record, it is probable that historic title to the disputed waters ripened before the date of those Canadian intrusions. Consequently, the presence of those vessels is neither relevant nor controlling on the issue of creation of historic title. Even if historic title had not ripened before the Canadian intrusions, it is not likely those intrusions would have interfered with the emergence of historic title for the reason that American authorities consented to their presence. Had the Canadians been present in greater numbers on more frequent occasions, or had they been fishing for salmon instead of halibut, it is probable that American fishing regulations would have been enforced against them. Further, the evidence indicates a spirit of comity existing in the form of customary reciprocal fishing rights between American and Canadian halibut fishermen which remained unwritten until 1970. Canada-U.S.A. Reciprocal Fishing Agreement, April 24, 1970.

In summary, the evidence indicates clear beyond doubt that foreign maritime nations having a possible interest in lower Cook Inlet have respected American dominion over those waters.

The requirements for the emergence of historic title have been satisfied under the general principles of international law. All of Cook Inlet located north of the Cape Douglas-Point Gore line, including the Barren Islands, are inland waters of the State of Alaska. Accordingly, under the provisions of the Submerged Lands Act of 1953, the subsurface resources of lower Cook Inlet are vested exclusively in the State of Alaska.

The United States has advanced the argument that a decision by this court upholding historic title substantially would interfere with the conduct of foreign relations by the Executive branch of government. Under the facts and circumstances of this case, the court sees no merit in that contention. The United States has never considered lower Cook Inlet to be a part of the high seas. As the evidence clearly establishes, the United States has long considered all of Cook Inlet to be historic inland waters.

Therefore,

IT IS ORDERED:

1. THAT the complaint of the United States to quiet title to the designated areas of lower Cook Inlet is dismissed.

2. THAT judgment may be entered in favor of the State of Alaska.

3. THAT counsel for the State of Alaska review proposed findings of fact and conclusions of law and judgment in the light of this memorandum and present appropriate findings, conclusions, and judgment to the Court.

DATED at Anchorage, Alaska, this 14th day of December, 1972.

/s/ James A. von der Heydt
United States District Judge

cc: G. Kent Edwards, United States Attorney
Edward F. Bradley, Jr., Department of Justice
John E. Havelock, Attorney General

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Civil No. A-45-67

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA, DEFENDANT

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

I. INTRODUCTORY

1. In legal notices dated February 27 and March 6 and 13, 1967 the State of Alaska offered for sale at competitive bidding oil and gas lease as to Tract C 19-1, described in such notice as T.2S., R.16W., S.M., Sections 15, 16, 21 and 22, all more than three miles from shore within the disputed area of Cook Inlet.

2. On March 20, 1967, the United States filed the Complaint herein to quiet title and for injunctive relief to prevent the State of Alaska from leasing or offering to lease the mineral reserves within the disputed area.

3. The area in dispute in this case is the area encompassed by the lines "T" and "SL", said lines offered as Exhibits A and B respectively to the pretrial order herein.

II. GEOGRAPHIC AND ECONOMIC CHARACTERISTICS OF COOK INLET

4. The geographic and economic characteristics of Cook Inlet are such that it would have been unnatural had not the inhabitants of its shores exercised continuous sovereignty over its shores and waters from the earliest times forward, with the acquiescence of foreign nations.

5. Cook Inlet is a clearly defined, well marked indentation whose penetration is in such proportion to the width of its mouth, so that, together with the location of Kodiak Island off its natural entrance, it contains land-locked waters. (Exhibit B; Hodgson's depos. pp. 41-43)

6. The area of Cook Inlet is larger than that of the semi-circle whose diameter is drawn across the mouth of Cook Inlet. (Exhibit B)

7. The line extending between the natural entrance points of Cook Inlet is approximately forty-seven miles long.

8. The waters of Cook Inlet are completely surrounded by the lands of Alaska so that in a geographic sense Cook Inlet resembles a large inland lake. (Exhibit B)*

9. All Cook Inlet's streams and tributaries, numbering more than 131, are entirely situated upon the lands of Alaska. (Exhibit B, IW, and Stewart's testimony, Tr. p. 574).

10. Cook Inlet is not and has never been a waterway for intercourse between nations. (Exhibits B through I, K)

11. Cook Inlet is necessarily inland, well marked by prominent headlands inside of which the mariner instinctively feels himself within the jurisdiction and

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* Although of questionable legal significance, it is an interesting historic fact that the earliest explorers, who first saw Cook Inlet and its natural terrain, labeled the waters "Cook River." (Exhibit A, and Dr. William Hunt's testimony, Tr. p. 502).

domain of Alaska. (See Exhibit B, Dr. M. Strohl's testimony, Tr. pp. 457-474, and 464-465)

12. From the beginning of recorded history Cook Inlet has been vital to the economic interest of those persons inhabiting its shores; first the carrying on of the fur trade; from the late 1800's to the present, extensive fishing; and more recently, activity relating to both hard minerals and oil. (See Dr. George Rogers' testimony, Tr. pp. 596-636, and Robert DeArmond's testimony, Tr. pp. 520-570; Dr. William Hunt's testimony, Tr. pp. 474-518; Exhibits GI-HH, IY, IZ, JA, IW)

13. All of Cook Inlet's waters have been and are such that they have been easily patrolled and protected by the government entity which has controlled its shores. (See Findings 19 through 85 below)

14. If the United States and the State of Alaska had not controlled the fishing carried on within the disputed area of Cook Inlet, as hereinafter found, there would have been a disastrous effect upon the fish resources in Cook Inlet which had theretofore been exploited by the citizens of the United States and residents of Alaska. The landing law could not and would not have prevented the disaster. (Don Stewart's testimony, Tr. pp. 577-588)

15. Conversely, the existence and enforcement of such fishing laws were not intended for the benefit of persons living elsewhere, as in Canada, Russia, or Japan. (Rogers' testimony, Tr. pp. 596-636; Stewart's testimony, Tr. pp. 571-596; Ex. AF-1906 Alien Fishing Act; White Act 43 Stat. 464)

III. Exercise of Sovereignty

16. The State of Alaska has produced evidence, hereinafter referred to in subsequent Findings, which establishes clear beyond doubt that there has been an exercise of sovereignty over Cook Inlet by governments whose nationals have inhabited its shores sufficient to justify the status of the disputed area of Cook Inlet as an historic inland water bay of the United States and now of Alaska.

A. *Russian Sovereignty*

17. Russia exercised sovereignty over the disputed area of Cook Inlet and, although the exercise of such sovereignty in the early days of Alaska's history was not as extensive as that subsequently exercised by the United States and State of Alaska, it was, nevertheless, consistent therewith.

18. From an historic standpoint, all of Cook Inlet fell under exclusive Russian dominion by the early 1800's. (Exhibit X, pp. 243-244; Exhibits W and Y, DeArmond testimony, *infra*, Finding 19; Dr. Hunt's testimony, Tr. pp. 497-502; Exhibits GU, GV)

19. At least four Russian settlements existed on the shores of Cook Inlet by the early 1800's. (DeArmond's testimony, Tr. pp. 528-531; 535-542; Exhibits HV, GU, GV)

20. In about the year 1786, an attempt to enter Cook Inlet by the Englishman, Portlock, drew a volley of cannon fire from a Russian fur trader in the vicinity of Port Graham—a traditional and recog-

nized show of authority. (Hunt's testimony, Tr. pp. 492 and DeArmond's testimony, Tr. p. 569)

21. The Bering Sea Fur Seal Arbitration did not adjudicate the status of Cook Inlet. In fact the United States lost the arbitration principally because it could not prove that Russia exercised sovereignty over the Bering Sea. (Exhibits AB-1, p. 36; AB-2; AB-3, p. 79)

B. *United States Sovereignty*

22. The rights of Russia as to jurisdiction and sovereignty in Cook Inlet passed unimpaired to the United States at the time of the Treaty of Cession, 1867. (Fur Seal Arbitration, AB-3, p. 79)

23. Thereafter the United States began and continued the exercise of sovereignty over all of Cook Inlet. (*Infra.*, Findings 22 through 63)

24. The vessel, KODIAK, was arrested in 1892 because of an alleged violation of R.S. 1956 by the United States Revenue cutter MOHICAN more than twenty miles from shore in the disputed area of Cook Inlet slightly north of a line extending between Cape Douglas and Point Bede. (*The KODIAK*, 53 Fed. 126 (1892); Exhibit AE; DeArmond's testimony Tr. pp. 544-545)

25. At the same time of the arrest of the KODIAK, the vessels LETTIE and JENNIE were arrested more than three miles from shore in Cook Inlet by the United States Revenue cutter MOHICAN for the same reason as in the case of the KODIAK. (DeArmond's testimony, Tr. pp. 544-546; Exhibit HV)

26. The United States District Court for the District of Alaska in *The KODIAK*, 53 Fed. 126 (1892), concluded that the seizure of the KODIAK was made on the assertion on the part of the United States of territorial jurisdiction over the waters of Cook Inlet. (*Supra*, Finding 24)

27. The arrest of the KODIAK, LETTIE and JENNIE was the subject of newspaper publicity extending from June, 1892 through December, 1892; and the opinion of the court in that case was sent to and received by the Attorney General of the United States, who took no overt action of disapproval. (Exhibits AE, BV)

28. The vessels, OLGA and MARY ANDERSON were boarded in the disputed area of Cook Inlet, twelve miles off Port Graham, in 1893 by a United States patrol boat because of a suspected violation of R.S. 1956. (DeArmond's testimony, Tr. pp. 546-547; Exhibit HV)

29. R.S. 1956 was interpreted to require the seizure of foreign vessels hunting sea otter within the three mile limit. Since seizures occurred more than three miles from the shoreline of Cook Inlet, the necessary inference is and was that the baseline from which to measure the three miles was not interpreted as the shoreline of Cook Inlet.

30. The arrests and seizures of the vessels KODIAK, LETTIE and JENNIE, by enforcement officials of the United States government and the subsequent ruling of the United States District Court in 1892 and the subsequent boardings of the vessels

OLGA and MARY ANDERSON by enforcement officials in 1893 were assertions of sovereignty by the United States over the disputed waters of Cook Inlet.

31. If the foregoing are not assertions of sovereignty, then the earliest clear assertion of sovereignty by the United States over the disputed waters of Cook Inlet occurred in 1906 when the Congress of the United States passed an Act Prohibiting Fishing by Aliens in the waters of Alaska under the jurisdiction of the United States.

32. For purposes of enforcing such Act, all waters of Cook Inlet were "waters of Alaska under the jurisdiction of the United States," to-wit: waters inside a line extending from Point Gore through the Barren Islands to Cape Douglas (inland waters) and all waters extending three miles seaward of that line (territorial sea). (Exhibits AF, BX, BY; *KODIAK* case, *supra*; Exhibits CH, CI, BZ, FO; Studdert's depos., pp. 11-13 and 23-24; Skerry's depo., p. 29; Headlee's testimony, Tr. pp. 319-320; Tr. p. 340; Erickson's depos. pp. 11-13; Robert's testimony, Tr. pp. 300-322.

33. The effect of such Act was to exclude aliens from fishing within the above-described inland waters and territorial sea of Cook Inlet and to permit the search and seizure of foreign vessels engaging in the proscribed activity. (*Supra*, Finding 32)

34. The United States Revenue Cutter Service as early as 1906 had the duty to enforce the Alien Fishing Act.

35. In 1922, by Executive Order, President Harding created the Southwestern Alaska Fisheries Reservation. Regulations promulgated pursuant to the Executive Order described Cook Inlet as that area "north of the latitude of Cape Douglas . . . including the Barren Islands . . . and all the shores and waters of Cook Inlet." All of that area was included within the Southwestern Alaska Fisheries Reservation. (Exhibits AJ and 22)

36. The following admonition of the President of the United States was applicable within the Southwestern Alaska Fisheries Reservation:

> "Warning is hereby expressly given to all unauthorized not to fish in or use any of the waters herein described or mentioned."

(Exhibit AJ)

37. Under the Southwestern Alaska Fisheries Reservation, permits from the United States government (Bureau of Fisheries) were required if fishing activity was carried on upon waters landward of the baseline from which the territorial sea was measured (or stated in another way, within the three mile limit). (Exhibit CG, p. 7 and Exhibit DO)

38. The agent of the United States Bureau of Fisheries regularly patrolled the disputed area of Cook Inlet for the purpose of enforcing the regulations and permit requirements of the Southwestern Alaska Fisheries Reservation. (Studdert's depos., p. 19)

39. On May 27, 1924, W. P. Studdert, Agent in Charge of the United States Bureau of Fisheries Op-

erations in the Cook Inlet District of the Southwestern Alaska Fisheries Reservation boarded two American halibut schooners, the NEW ENGLAND and the ZAPORA for fishing halibut in Cook Inlet without the required permits. The boardings by Mr. Studdert took place more than three miles from shore, in the disputed area of Cook Inlet, along a line extending generally from Snug Harbor to Seldovia. (Exhibits BE, BF, DJ, B; Studdert's depos. pp. 10-20, Tr. pp. 551, 554; and Exhibit HV)

40. In 1924 the Congress of the United States passed the "Act for Protection of the Fisheries of Alaska and for Other Purposes" (the White Act). (43 Stat. 464)

41. The White Act granted the Secretary of Commerce and later the Secretary of the Interior the power to "set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction." (43 Stat. 464)

42. Pursuant to his authority granted under the Act, the Secretary of Commerce and later the Secretary of the Interior from 1924 through 1959 included as waters of Alaska over which the United States has jurisdiction, all of the waters of Cook Inlet inside a line extending from Point Gore through the Barren Islands to Cape Douglas. (Laws and Regulations for the Protection of Fisheries of Alaska, Department of Commerce, Dec. 2, 1924; Exhibit IU)

43. For purposes of fishery management under the White Act the three mile limit in Cook Inlet was measured from a line connecting Cape Douglas, the

Barren Islands and Point Gore. (Exhibits IU, FO; Day's depos. pp. 4-13; Skerry's depos. p. 24, line 13; record as a whole)

44. The Cook Inlet area as it was defined in regulations promulgated under the White Act from 1924 through 1956 was not, as in the case of all other regulatory areas defined pursuant to the White Act, limited to territorial coastal and tributary waters of Alaska. (Exhibits IU and CR)

45. Unlike the Florida statute which was the subject of *Skiriotes* v. *Florida*, 313 U.S. 69 (1941), the regulatory provisions of the White Act (Respecting seasons, area closures, type of gear and limits) were interpreted by those charged with their enforcement as being applicable to all such fishing activities—whether carried on by United States nationals or foreigners—upon the inland waters and territorial sea of the United States. Whereas the Florida statute, the subject of the *Skiriotes* case, expressly referred to the Gulf of Mexico, an area of international waters over which jurisdiction could properly be claimed against citizens of Florida only, the White Act dealt with the waters of Alaska, over which the United States had jurisdiction which could be and was asserted against all persons, citizen and alien alike. Those regulatory provisions of the White Act, unlike the aforementioned Florida statute, were not construed as an exercise of authority over the United States nationals fishing upon international waters. (Exhibits BD, CR, EM, EK, EL, EI and AZ, p. 81)

46. Agents and officials of the United States Bu-

reau of Fisheries, Fish and Wildlife Service and Bureau of Commercial Fisheries regularly and consistently patrolled all of the Cook Inlet area as defined in the White Act regulations. Such patrols were carried out continuously from at least 1941 through 1959. The purpose of such patrols was to enforce all the fishery laws and regulations of the United States including the Alien Fishing Act within the inland waters and territorial sea of Cook Inlet, as described in Finding #3. Such patrols were carried out by vessel and aircraft and resulted in boardings with no concern as to the distance from the shore of Cook Inlet and in the disputed area. (Erickson's depos. pp. 3-7; Exhibit FN; Headlee's testimony, Tr. pp. 336-339; Smith depos. pp. 2; 4-9; 23-31; and 36; Costello's depos. pp. 4-8; 12; 15-23; Naab's depos. (No. 1) pp. 3; 25-26; 39-41; Shea's depos., pp. 3-10; 12-16; Exhibit IR and Wardleigh's depos., pp. 4, 10-12; Exhibit FK; Wilson's depos., pp. 3-13; Skerry's depos., pp. 3-6, 12-13, 16-21; Robert's testimony, pp. 302-310; 312-318)

47. The continuous patrolling of Cook Inlet and enforcement by agents of the United States of Acts and regulations throughout all of Cook Inlet was open, apparent, and visible to all—United States nationals and foreigners alike—who may have taken occasion to examine the conditions existing in Cook Inlet. These were deeds—and not merely proclamations—by which the intent of the United States to exercise sovereignty was clearly expressed.

48. The fact that no foreigners—except for a few

isolated Canadian halibut fishermen, referred to below —fished or attempted to fish in Cook Inlet, is clear evidence that the regulatory provisions were respected by foreign nations, so that there was no necessity for an act of enforcement by the United States government against them.

49. Claude William Shea in July, 1953 seized the vessel and gear of a United States fishing vessel acting contrary to the fishery laws and regulations (White Act) of the United States as to type of gear at a point in Cook Inlet more than three miles from shore in the area disputed in this litigation. (Shea's depos., pp. 13-16)

50. Courtland Marchant, a United States citizen, was arrested by enforcement personnel of the United States Fish and Wildlife Service for violating gear spacing regulations (White Act). The violation occurred at a point in Cook Inlet more than three miles from shore in the area disputed in this litigation. The arrest occurred on or about July, 1951. (Marchant's depos., pp. 2-10; Exhibits HI and HJ)

51. George Mosher, a United States citizen, was arrested by enforcement personnel of the United States Fish and Wildlife Service for violating gear spacing regulations (White Act). The violation occurred at a point in Cook Inlet more than three miles from shore in the area disputed in this litigation. The arrest occurred on or about July, 1951. (Mosher's depos., pp. 3-7; 12)

52. Earl Solie, a United States citizen, was arrested by enforcement personnel of the United States

Fish and Wildlife Service for violating gear spacing regulations (White Act). The violation occurred at a point in Cook Inlet more than three miles from shore in the area disputed in this litigation. The arrest occurred on or about July, 1951. (Solie's depos., pp. 2-9; Exhibit FI)

53. Harley Adams, a United States citizen, was arrested by enforcement personnel of the United States Bureau of Commercial Fisheries for violating gear spacing regulations (White Act). The violation occurred at a point in Cook Inlet more than three miles from shore in the area disputed in this litigation. The arrest occurred on or about July, 1957. (Adams' depos., pp. 3-5; Exhibits FJ and FJ1)

54. Sverre Omsund, a United States citizen, was arrested by enforcement personnel of the United States Bureau of Commercial Fisheries in 1957 for fishing in the disputed area of Cook Inlet without a commercial fishing license. Mr. Omsund was fined $150.00. (Omsund's depos., pp. 2-7; Exhibit FH)

55. United States Department of Interior regulations for many years prior to Alaska Statehood prohibited the use of drift gill nets in all of Cook Inlet south of the latitude of Anchor Point. Fishery patrol agents of the United States enforced the prohibition in that portion of Cook Inlet, more than three miles from shore. (Skerry's depos., pp. 3-7; 17-21; Roberts' testimony, Tr. pp. 301-310; Exhibits IU, BD)

56. Patrols of the Fish and Wildlife Service and Bureau of Commercial Fisheries in the Resurrection Bay area generally confined patrols to those areas

lying within a three mile distance from the shore. Patrols in Cook Inlet from Point Gore and Cape Douglas north were not so confined. (Roberts' testimony, pp. 301-318, particularly pp. 310-318)

57. In October 1930 the United States Tariff Commission, in the course of an investigation relating to the entry of fish products into the United States from the high seas on alien owned vessels prepared a map showing the landward boundary of the high seas to indent deeply areas such as Cook Inlet, Dixon Entrance, Chatham Strait, Yakutat Bay, Nushagak Bay and Kviehak Bay. The Alaska maps were ordered destroyed since they constituted an invitation to foreign fishery interests to invade waters which therefore had always been considered as open only to nationals of the United States. (Exhibits CX, AR, CY, CY-1, CY-2)

58. From 1957 through 1959 a regulation of the Department of Interior (50 C.F.R. § 101.19) defined waters of Alaska as all those waters extending three miles seaward from the lines extending between the headlands of inlets. Said regulation did not by its terms exclude Cook Inlet from its application. The regulation defining the waters of Alaska described the waters where, prior to 1967, the fishery regulations of the United States were applicable. Said regulation was transmitted to Canada. (Exhibits IU, IP, JF, BC, DB, EX, IE-1, IE-6 through IE-10)

59. While 50 C.F.R. § 101.19 remained in effect, a conference was held in 1957 between duly author-

ized representatives of the governments of the United States and Canada. The basic purpose of the conferees was to prohibit the citizens of each country from fishing for salmon with nets in international waters in the North Pacific Ocean. There arose a question as to the location of the waters of Alaska and more particularly, a question as to where and how 50 C.F.R. § 101.19 was to be applied. (Exhibit DC)

60. In order to determine the location of international waters off the Alaska coast, the Canadian government requested the United States government to furnish charts to depict thereon the exact location of the waters of Alaska as defined in 50 C.F.R. § 101.19—as opposed to or differentiated from international waters. (Exhibits DC, DD, IE-1 through IE-5)

61. The United States government responded to the request. On or about October 15, 1957 it transmitted to the Canadian government charts depicting a line which thereafter became known as the Gharrett-Scudder line. (*Supra* Finding Nos. 58-60; Exhibits GH-1, GH-2; Naab's depos. (No. 2), pp. 26-33; Scudder's depos., pp. 8-10; Terry's depos., pp. 6-8; Exhibits JF, JJ, FF, FF-1 through FF-4, FF-A; IE-6; Alaska's 17th Request for Production of Documents, request #2; Gharrett's depos., pp. 3-9; Exhibits FX, FY, FZ)

62. The Gharrett-Scudder line in Cook Inlet (Exhibits GH-3, GH-4) depicted the baseline for the

measurement of the territorial sea for purposes of fishery regulation, which enclosed, as inland waters, all of the disputed area in Cook Inlet. (*Supra*, Finding 57; Exhibits AM, IT; Kirkness' depos. (No. 2), pp. 3-15; Rickey's testimony, pp. 684-687; Swanson's testimony, pp. 675-679)

63. The formulation and presentation of the Gharrett-Scudder line by the United States government to the Canadian government was and is a classic demonstration of the assertion by the United States government of its claim to sovereignty over the whole of Cook Inlet, including the area in dispute. (*Supra*, Findings 58-62)

C. *Alaskan Sovereignty*

64. As a consequence of the enactment of the Alaska Statehood Act, both the Alien Fishing Act and the White Act were superseded. The result was that on January 1, 1960, the State of Alaska assumed control of the fisheries formerly within the jurisdiction of the federal Acts.

65. The undisputed evidence indicates that the description of Cook Inlet under the Alaska Commercial Fishing Regulations since statehood has not substantially changed from the definition or description under the federal Acts. Under the Alaska regulations, the Cook Inlet area includes all the waters located inland from the line drawn from Cape Douglas to Point Gore, including the Barren Islands. (5AAC 109.02 (1959)).

66. Those regulations have been published and since 1960 have been distributed to the United States and representatives of Japan, Canada and other foreign nations. No foreign nation has protested the assertion of the State's jurisdiction over the inland and territorial waters of Cook Inlet. (Tr. pp. 637-645; Exhibits IX-1-12; AM; Kirkness' depos. (No. 2) pp. 3-15; record as a whole).

67. The United States, having knowledge of the State of Alaska's assertion of fishery jurisdiction to persons other than its own citizens in all of the disputed area of Cook Inlet, has not objected to, but in fact has acquiesced in Alaska's assertion of jurisdiction and has thereby continued, as opposed to foreign nations, the assertion of American sovereignty over the inland waters and territorial sea of Cook Inlet. (Exhibits ES, CV, FD, AM, IT; record as a whole).

68. The United States, in response to a request by the State of Alaska, transmitted to the State copies of the Gharrett-Scudder line. The State, with the knowledge of the United States, relied on that line in establishing its authority over the disputed waters in Cook Inlet.

69. Since January 1, 1960, when the State of Alaska assumed control of the fisheries of Alaska, its law enforcement officials have patrolled all of Cook Inlet, within the area defined by Alaska regulations, enforcing such regulations against all persons including citizens and non-citizens of Alaska.

70. Thus, again by deeds, rather than mere proclamations, the State of Alaska, since statehood, has

asserted and exercised sovereignty over the disputed area of Cook Inlet, openly, visibly and apparent to all who may have taken occasion to look into the conditions existing in Cook Inlet.

71. On or about July 6, 1970, Frank M. DeRossitt, a non-resident of Alaska, was arrested by an officer of the Alaska Department of Fish and Game more than three miles offshore south of Anchor Point, in the disputed area because of possible illegal fishing with drift gear. (DeRossitt's testimony, Tr. pp. 661-667 and Exhibits JB and JC)

72. On or about July 6, 1970, Kjarten Ask, a non-resident of Alaska, was arrested by an officer of the Alaska Department of Fish and Game more than three miles offshore south of Anchor Point, in the disputed area because of possible illegal fishing with drift gear. (Ask's testimony, Tr. pp. 669-674) and Exhibits JD and JE)

73. The clearest exercise of sovereignty by the State of Alaska occurred in the Shelikof Strait in 1962. The Japanese fishing vessel BANSHU MARU and two other Japanese fishing vessels, in April, 1962, had intruded into the southernmost part of lower Cook Inlet near the Barren Islands for a few hours and then immediately proceeded into the Shelikof Strait.

74. Having been forewarned that such Japanese fishing vessels intended to intrude into these waters in an attempt to establish historic Japanese fishing rights in those areas, the Governor of Alaska sought action by the federal government to forestall an in-

ternational incident and to protect the State of Alaska from these intrusions.

75. The federal government's response to what was regarded by Alaska state officials as an emergency was, at best, belated and, at worst, an unwillingness to act.

76. On a previous occasion, in July, 1961, when foreign whaling vessels had been observed less than three miles from the coast of Alaska, the federal government, as in April, 1962, was unwilling to take action, but encouraged the State of Alaska to act.

77. Consequently, on or about April 15, 1962, law enforcement agents of the State of Alaska arrested three Japanese vessel captains and boarded two Japanese fishing vessels, at least one of which was more than three miles from shore in Shelikof Strait.

78. After the arrests and boardings and with the knowledge of the Government of Japan, the Eastern Pacific Fisheries Company agreed in writing with the State of Alaska not to fish in any part of the disputed area of Cook Inlet. (Ischimura's testimony, Tr. pp. 270-273; Gov. Egan's testimony, Tr. pp. 731-732; Exhibit IV)

79. No fishing by any Japanese citizen or vessel has taken place in Cook Inlet at any time subsequent to the agreement. (Exhibit EB; Ischimura's testimony, Tr. p. 273; Gov. Egan's testimony, Tr. pp. 732 and 746)

80. As a result of the aforementioned agreement by the Eastern Pacific Fisheries Company to refrain from fishing in Cook Inlet and Shelikof Strait, the

cases against the Japanese for illegally fishing in the State of Alaska's waters were not immediately prosecuted. The cases were ultimately dismissed, some years later when there had been no further intrusions by the Japanese into these waters. (Exhibit IV; Gov. Egan's testimony, Tr. p. 732; pre-trial order p. 4)

81. On May 3, 1962 the Japanese government had sent a diplomatic note of protest to the United States Department of State relative to the arrests and boardings by the State of Alaska in Shelikof Strait. (Exhibit II)

82. The official reply sent by the United States to Japan did not, contrary to an intra-departmental suggestion made by one member of the Secretary of State's legal staff, declare that Shelikof Strait or Cook Inlet were international waters. (Exhibit II)

83. On the contrary, the President of the United States, in January, 1963, informed the Governor of Alaska that he did the right thing in seizing the Japanese vessels and arresting the Japanese captains in April of 1962. (Gov. Egan's testimony, Tr. pp. 767-768)

84. Although the evidence is conflicting in the sense that there was some apparent disagreement among the advisors to the Secretary of State, it is clear that the correctness of the action by the State of Alaska, in effecting the aforementioned seizures and arrests, has never been officially denied by the United States, although the aforementioned Japanese

note of protest requested the United States to repudiate the validity of the actions of the State of Alaska.

85. By refusing to accede to the Japanese diplomatic note, the United States acquiesced in the action of the State of Alaska; however, it may be pointed out that there is no clear evidence that the Department of State has expressly stated that the Alaskan officials acted properly.

IV. Continuity of Exercise of Sovereignty

86. The exercise of sovereignty over Cook Inlet, the nature of which is indicated in the foregoing Findings, has continued for such period of time as to have developed into a usage. (Record as a whole)

87. Russia exercised sovereignty over all of Cook Inlet continuously from at least 1821 through 1867. (*Supra*, Findings 18-21, incl.)

88. The exercise of sovereignty by the United States over the disputed area of Cook Inlet has existed without interruption continuously from at least 1906, and possibly earlier, to the time this dispute arose. (*Supra*, Findings 22-63, incl.)

89. The legislative enactments and federal regulations of the United States applicable to the disputed area have been applied consistently and without interruption for a sufficient time to give rise to a usage by the United States and its successor, the State of Alaska, over the disputed waters.

90. The State of Alaska has exercised continuous authority and sovereignty over the disputed waters

from 1959 to the present. (*Supra*, Findings 65-83, incl.)

91. Hence, the exercise of authority over Cook Inlet by Americans has lasted for more than sixty-six years. (*Supra*, Findings 22-83, incl.)

V. Attitude of Foreign Nations

92. Foreign nations have tolerated and acquiesced in such exercise of sovereignty over Cook Inlet.

93. No protest of a foreign country was made to the exclusive Russian dominion over Cook Inlet.

94. No protest of a foreign nation was made to the application or enforcement of either the Alien Fishing Act or the White Act to all of the disputed area of Cook Inlet.

95. Canada, the foreign nation which would be one of the most keenly interested countries in the status of Cook Inlet, accepted the placement of the Gharrett-Scudder line, hereinabove mentioned. (Terry's depos., p. 13; Findings 58-63)

96. Likewise, neither Canada, Japan, nor any other nation has protested the definition of the waters of Alaska as publicized in 1957 and in subsequent years by both the United States and the State of Alaska Commercial Fishing Regulations. (Middleton's testimony, Tr. pp. 638-644)

97. The exercise of authority over Cook Inlet by persons and states who controlled its shores has been notorious and well documented over a period of more than sixty-six years. (DeArmond's testimony, Tr. pp. 520-570)

98. The openness and notoriety of the claim over the disputed waters of Cook Inlet were such that all foreign nations knew or should have known of the claim.

99. Since the arrest of the BANSHU MARU there have been intrusions into other waters off the Alaskan coast by Japanese, Soviet, Korean and Canadian vessels; nevertheless, there have been no such documented intrusions into lower Cook Inlet, except as noted hereunder in Finding 100. (Gov. Egan's testimony, Tr. pp. 732, 746; Exhibits 118, EB)

100. Although, undoubtedly, the United States has made an exhaustive study of its records, it has only been able to offer evidence—inconclusive and disputed—which, if believed, would show only a few isolated intrusions of Canadian halibut vessels inside Cook Inlet, at least one of which was within the territorial sea of Cook Inlet. (Exhibits 78, 78A, 80; Hodgson's depos., Exhibit 5; Costello's depos., pp. 29-31)

101. The number of such Canadian halibut vessels has been so small as to be *de-minimis*—particularly so when there is considered: (a) there were possibly only two undetected such occurrences before Alaskan statehood; (b) afterwards only five Canadian vessels have fished for halibut in Cook Inlet, none of which were detected by state law enforcement officials; (c) the time in question goes back more than sixty-six years; (d) never has there been any other foreign fishing activity, such as, for salmon or other species; (e) the traditional ties of friendship between the

United States and Canada; and (f) historic title had already ripened to the disputed area. (Exhibits 78, 78A, 80; Costello's depos., pp. 29-31; Exhibits Q, R; Day's depos., p. 17; Exhibits DZ and EA; O'Dale's depos., pp. 20-21; Scudder's depos., p. 30; Headlee's testimony, Tr. pp. 343-344; Wardleigh's depos., p. 13; Naab's depos. (No. 1) pp. 50-51; Shea's depos., p. 17; Wilson's depos., p. 14; Skerry's depos., pp. 30-31; Roberts' testimony, Tr. p. 319.)

102. The infrequent and isolated nature of Canadians—no other foreigners—fishing within the waters of Cook Inlet reinforces the view that Cook Inlet has been recognized by foreign nations as inland waters of Alaska and the United States.

VI. Miscellaneous Findings

103. The so-called disclaimers relied upon by the United States government are ineffectual because (a) they are refuted by historic evidence, referred to above, which is clear beyond doubt; (b) they were hastily prepared, based on questionable research, and offered in a self-serving effort by the federal government to have the Court disregard historic facts; and (c) came at a time when historic title had already ripened into ownership of the disputed area of Cook Inlet.

104. The background investigation pertaining to the letter from Abram Chayes to Frank J. Barry dated May 3, 1962 was done by a staff assistant in the Office of the Secretary of State's Legal Advisor.

The investigation was limited to records of the State Department. (Exhibit 58; Chayes' depos. pp. 5-12; Yingling's depos. pp. 5-12; 15-16; 18-21)

105. The background investigation pertaining to said letter was inadequate in that: (a) not all of the records of the State Department or other departments necessary to form an adequate basis for the conclusions contained in said letter were searched; (b) an adequate investigation would have required research by one person of at least three months, whereas in fact, the one person assigned to the project took only six days. (Simon's depos., p. 54-55; Exhibits HT; HT-1; Alaska's 11th Set of Interrogatories No. 4)

106. The conclusions contained in the letter from Leonard Meeker to Shiro Kashiwa, dated July 3, 1969, were based on no research other than that referred to above, plus an insignificant amount of additional research. (Carter's depos., pp. 6-11)

107. The charts depicted by Exhibit 73 were drafted by the Law of the Sea Baseline Committee at a time when this case was pending in this court. Among the members of that committee at the time was the principal attorney for the United States in this litigation. Said exhibit cannot be said to be an unbiased product. (Hodgson's depos., pp. 10-15; Exhibits HY, HX, IB, IC, IC-1)

108. The background factual research pertaining to Exhibit 73 was based upon no information other than that referred to in Findings 104-106. (Hodgson's depos., pp. 6-7; 44-45; 48-49)

109. Contrary to the position now advanced by the United States in lower Cook Inlet, the Baseline Committee determined Long Island Sound to be historic waters of the United States in the absence of a declaration by the Executive Branch to that effect. The Baseline Committee failed to discuss, in its deliberations, the possible historic status of Cook Inlet and it is clear such committee did not have before it the evidence which has been presented to this Court. (Hodgson's depos., pp. 49, 151-153; 157-159; Exhibit HX)

110. Evidence is lacking to show that Exhibits 66, 86, 91, 108 and 110 are based on research other than that referred to above.

111. Likewise the filing of this complaint and the unproven allegations made therein by the United States government are not effective disclaimers.

Conclusions of Law

1. The Court has jurisdiction of this action under 28 U.S.C. § 1345.

2. The controlling issue, presenting mixed questions of law and fact, is stated in the pre-trial order as follows:

> "Whether the United States or the State of Alaska is entitled to the natural resources of the seabed and subsoil of Cook Inlet between the line designated as "T" on Exhibit A, as attached hereto, and the line designated "SL" on Exhibit B, as attached hereto, or any part thereof."

3. The controlling principles of law are clear and undisputed insofar as historic bays are concerned. In the main there has been little difference between the parties as to these principles of law. Hence, this case has turned, in large part, upon the significance to be accorded the facts presented herein, within the framework of the legal conclusions set out below.

4. Section 6(m) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 343, provides that:

> "The submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder."

5. Section 4 of the Submerged Lands Act of 1953, U.S.C. § 1312, provides that:

> "The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to the line three geographical miles distance from its coast line . . ."

6. Section 2(c) of the Submerged Lands Act of 1953, 43 U.S.C. § 1301(c) provides that:

> "The term 'coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the *seaward limit of inland waters.*" (Emphasis added)

Congress left undefined the term "inland waters", leaving such term subject to judicial interpretation.

7. The United States Supreme Court has adopted, and this Court applies, the definition of inland waters set forth in terms of international law in the Convention on the Territorial Sea and Contiguous Zone. (T.I.A.S. No. 5639)

8. Section 4 of Article 7 of such Convention provides that:

> "4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters."

It is apparent that this requirement is not satisfied as to lower Cook Inlet—the area here in dispute.

9. However, Section 6 of Article 7 of the Convention on the Territorial Sea and Contiguous Zone provides that: "the foregoing provisions shall not apply to so-called 'historic bays' . . ."

10. The historic bay exemption of the Convention is the focus of the complex controversy presently before the Court. If lower Cook Inlet, the area in dispute, is an historic bay within the meaning of the Convention, that body of water is thus inland water within the meaning of the Submerged Land Act, with the result that the State of Alaska would have the exclusive right to the subsurface resources.

11. The burden of proof is upon the State of Alaska to show affirmatively that lower Cook Inlet

is an historic bay, failing which the result is that the United States would have exclusive right to the subsurface resources.

12. There is some uncertainty in the law concerning the quantum of proof required for a showing of historic title. The uncertainty revolves about the question as to whether the burden of proof is measured by the expression "clear beyond doubt"—a rigorous standard of proof—or by the "preponderance of evidence" rule ordinarily applicable to civil suits—a less rigorous standard.

13. Despite this uncertainty over the burden of proof, the Court has adhered to the higher standard of proof and the foregoing Findings of Fact have been made by the Court under the more rigorous standard—"clear beyond doubt".

14. There are three requirements for establishing historic title to the disputed waters, the first of which is the effective exercise of authority or sovereignty by the nation claiming the historic right.

15. Among the acts by which sovereignty is exercised are those which deny to foreign fishing vessels the right to fish in the disputed waters.

16. It is not necessary for the nation making the historic claim to undertake particular acts of enforcement if the laws and regulations were respected by foreign nations. It is only required that if an act of enforcement was necessary to maintain sovereignty, that such action was taken.

17. The State of Alaska has produced evidence which establishes clearly beyond doubt that there has

been such sufficient exercise of sovereignty over lower Cook Inlet, the area in dispute, as indicated in the Findings of Fact stated above.

18. The second requirement for establishing historic title to disputed waters is the continuity of the exercise of authority over a period of time sufficient to create a usage. No precise length of time is necessary to create a usage on which historic title is based. Since there are no precise time limit criteria, the lapse of time necessary to permit emergence of historic title is a matter of sound judgment.

19. The evidence produced by the State of Alaska proves clearly beyond doubt that the exercise of authority over lower Cook Inlet has existed without interruption from 1906, or even earlier, until the time this dispute arose. The legislative enactments and regulations, referred to in the Findings of Fact above, have been applied and enforced consistently and without interruption for a sufficient time to give rise to a usage over the disputed waters in lower Cook Inlet.

20. The final requirement for establishing historic title is the attitude of foreign nations. The precise attitude required has been defined by some as acquiescence and by others, perhaps most, as toleration. The United States Supreme Court has used language which indicates that the higher standard, acquiescence, is required. The distinction is immaterial in this case since, as a matter of law, the requirement has been satisfied under the higher standard of acquiescence. Under the Findings set out above, the community of nations has acquiesced, clearly beyond

doubt, in the emergence of historic title in the waters in dispute.

21. In making these Findings of Fact and in reaching these Conclusions of Law, the Court is mindful of the need for judicial restraint. In this connection the Court recognizes that the conduct of foreign relations is constitutionally vested within the exclusive control of the Executive and Legislative Branches of the United States government.

22. Nevertheless, in the case at bar, as in other cases between the federal and state governments, courts have traditionally exercised jurisdiction to resolve fundamental law questions and basic fact issues between state and federal governments.

23. In this controversy the claim that the disputed area of Cook Inlet is an historic bay must and has been viewed by the Court as if being made by the United States and opposed by another nation.

24. There cannot be a contraction of a state's recognized territory imposed by the federal government, as the United States government would attempt to do here, in the name of foreign policy.

25. State exercises of dominion, as distinguished from federal assertions of sovereignty may properly be considered on the issue of historic title. Hence, the exercise of dominion by the State of Alaska over Cook Inlet, as stated in the Findings of Fact above, has been considered by the Court as relevant to the existence of historic title, as well as other evidence of dominion by prior sovereignties, particularly the United States government.

26. The Court finds it would be inequitable in adopting the principles of international law to the resolution of this domestic controversy to permit the United States government to distort those principles, in the name of its power over foreign relations and external affairs, by denying any effect to the past events reflected in the Findings of Fact above.

27. As a matter of law, in the context of this litigation, disclaimers by the Executive Branch of the United States government with respect to the status of Cook Inlet are not binding upon this Court, since they constitute the impermissible contraction of authority cautioned against by the United States Supreme Court in *United States* v. *California*, especially in view of the clear evidence of continuous assertions of sovereignty by the United States over the waters in dispute.

28. The first disclaimer was a letter from the Secretary of State's Legal Advisor to Frank J. Barry, dated May 3, 1962. As of that time historic title, as indicated in the Findings of Fact above, had already ripened into ownership by the United States and had subsequently passed to the State of Alaska upon statehood in 1959.

29. In the light of the Findings of Fact hereinabove stated, the failure to assert jurisdiction over the few isolated instances of Canadian halibut fishing vessels in Cook Inlet does not defeat the claims of the United States and Alaska to Cook Inlet as an historic inland water bay.

30. Historic title, as further indicated in the Findings of Fact, had already ripened before the Canadian intrusions. Consequently, the presence of those vessels is neither relevant nor controlling upon the issue of creation of historic title.

31. Considering the extreme and continuous measures taken, first, by the United States authorities and, secondly, by the Alaskan authorities, to protect their fisheries, the Court concludes that had the Canadians been present in greater numbers, or on more frequent occasions, or had been fishing for salmon instead of halibut, the American fishing regulations would have been enforced against them. Indeed, the sparsity of such foreign intrusions is further clear evidence that foreign nations, having a possible interest in lower Cook Inlet, have respected American dominion over those waters.

32. In the light of its Findings of Fact, the Court concludes that the requirements for the emergence of historic title in and to the State of Alaska have been satisfied under the general principles of international law hereinabove enunciated.

33. In Cook Inlet, Alaska the line marking the seaward limit of the inland waters of Cook Inlet, Alaska is the line extending from Cape Douglas to the southernmost point of the Barren Islands and thence to Point Gore, as designated on Exhibit B to the Pre-Trial Order.

34. In Cook Inlet, Alaska, the line marking the baseline from which to measure the territorial sea is the line extending from Cape Douglas to the southernmost point of the Barren Islands and thence to Point Gore, as designated on Exhibit B to the Pre-Trial Order.

35. The territorial sea of Cook Inlet, Alaska extends three miles seaward from the line described in Conclusions Nos. 33 and 34, that is, to the line designated "SL" on Exhibit B to the Pre-Trial Order.

36. The State of Alaska has the right to, title in, and ownership of the seabed and subsoil of the inland waters of Cook Inlet defined in Conclusion No. 33.

37. The State of Alaska has the right to, title in, and ownership of the seabed and subsoil of the territorial sea of Cook Inlet defined in Conclusion No. 35.

DATED at Anchorage, Alaska this 29th day of January, 1973.

/s/ James A. Von Der Heydt
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of the above and foregoing Amended Findings of Fact and Conclusions of Law Proposed by the State of Alaska to Mr. A. Lee Peterson, Assistant United States Attorney, Anchorage, Alaska 99501; Mr. Bruce C. Rashkow and Mr. Edward F. Bradley, Jr., Attorneys, Department of Justice, Washington, D.C. 20530, this 29 day of January, 1973, by United States mail.

/s/ Charles K. Cranston
CHARLES K. CRANSTON

APPENDIX D

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 73-2400 (D.C. #A-45-67)

UNITED STATES OF AMERICA, PLAINTIFF/APPELLANT

v.

STATE OF ALASKA, DEFENDANT/APPELLEE

APPEAL from the United States District Court for the District of Alaska (Anchorage).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska (Anchorage) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A TRUE COPY
ATTEST: JUNE 5, 1974
EMIL E. MELFI, JR.
Chief Deputy and Acting Clerk
by /s/ Ray Hewitt
RAY HEWITT
Senior Deputy

Filed and entered March 19, 1974

[SEAL]

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No, 73-2400

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF ALASKA, APPELLEE

ORDER FOR RECALL AND STAY OF MANDATE

IT IS HEREBY ORDERED that the Motion of the United States for Recall and Stay of the Mandate to the extent it affects foreign fishing and navigation in the disputed area in Cook Inlet for an initial 30-day period and upon certification of the Supreme Court that petition for a writ of certiorari has been filed therein to continue until the final disposition of this case is granted.

/s/ J. Clifford Wallace
J. CLIFFORD WALLACE
United States Circuit Judge

Date

APPENDIX F

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1973 No. 52 Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF FLORIDA, DEFENDANT

Report of Albert B. Maris, Special Master
January 18, 1974

* * * *

> have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient.' Juridical Regime of Historic Waters, Including Historic Bays, [1962] 2 Y.B. Int'l L. Comm'n 1, 13, U.N. Doc. A/CN. 4/143 (1962)."

From these opinions of the Court and the authorities upon which they rely, I conclude that the criteria for establishing the existence of an historic bay or historic inland waters are three. First, there must be an open, notorious and effective exercise of sovereign authority over the area not merely with

respect to local citizens but as against foreign nationals as well; second, this authority must have been exercised for a considerable period of time; and, third, foreign states must have acquiesced in the exercise of this authority as against their nationals.

The extent of the limits of sovereign jurisdiction in the maritime belt along the coasts of the United States is a political question for the federal government, to be determined by its legislative and executive branches. *United States* v. *California*, 1947, 332 U.S. 19, 33-34. It would follow that a disclaimer by the United States of jurisdiction in any part of that area should, as the Court indicated in *United States* v. *California*, 1965, 381 U.S. 139, 175, ordinarily bar any claim to such jurisdiction by the state involved. The Court there pointed out, however, as we have seen, that the evidence supporting a state's historic claim might be clear beyond doubt, in which case the federal disclaimer would not be decisive. And in *United States* v. *Louisiana*, 1969, 394 U.S. 11, 75-77, the Court held that in a controversy in this field between a state and the United States, the state may, in support of its claim to historic inland waters, rely upon evidence of its own state activities in the area as well as any activities of the United States.

In the present case, the United States takes the position that it has disclaimed any historic title to or sovereign jurisdiction over the extensive area which the State of Florida claims as Florida Bay. In *United States* v. *California*, 1965, 381 U.S. 139, the disclaimer of the United States in the litigation itself

was held sufficient to bar the state claim. Here there is not only disclaimer in the litigation but additional evidence of activities and statements by officials of the United States of continued disclaimers of historic title to the waters in question. Included in this evidence is a series of maps of the coastline [United States Exhibit No. 101] which indicate the extent of the claim of the United States to the territorial sea along the coast of Florida and which were furnished to foreign nations for their information. The burden, therefore, is cast upon the State of Florida to establish by historic evidence which is "clear beyond doubt" that its historic claim meets the three criteria which I have described above and may, therefore, be sustained as against the federal disclaimer.

I turn then to consider the evidence which the State of Florida has offered in support of its claim. First, of course, is the boundary claimed by the 1868 Constitution approved by Congress which it asserts includes the entire area southeast of a straight line bearing 045° from north from the Dry Tortugas to Cape Romano which entire area it calls Florida Bay, as I have said, and claims as historic inland waters. If its construction of the boundary language is correct, which I have concluded it is not, this 1868 origin of its claim would certainly be remote enough in time to satisfy the second criterion for historic inland waters.

The first and third criteria, however, must also be met. The State must show that it, or the United States, exercised open, notorious and effective sover-

eign authority in the area as against the nationals of foreign states and that the foreign states acquiesced in the exercise of authority. As to this, the evidence submitted by the State is limited indeed. There is no evidence whatever that the federal government either claimed or exercised such authority over the area beyond the coastal belt of territorial sea recognized by maritime states. The evidence offered by the State that in 1826 a federal revenue cutter drove off "Bahama Turtlers who have heretofore occupied the Florida coast in pursuit of that employment" [Florida Exhibit No. 74], seems clearly to have related to the belt of territorial sea along the coasts of the Keys and the shallow waters between them where it appears that turtles were taken. The exercise of authority within that coastal belt would, of course, have no bearing at all on the question whether sovereign authority had been exercised and enforced on the high seas beyond the limits of that belt.

The State offered a series of maps dating back to 1854 which more or less clearly designate as Florida Bay the area now claimed by the State as its internal waters. I find, however, that this area has not been consistently treated by geographers and cartographers as a bay. Moreover, such a designation throws little or no light on the question whether the State actually exercised sovereign authority in the area.

The most common exercise of sovereignty in inland waters is the special control and, often, prohibition of navigation by foreign vessels and of fishing by

foreign nationals. The State of Florida offered no evidence that either it or the federal government had ever attempted to control or prohibit the mere navigation by foreign vessels of the area in question. There is evidence, however, that as early as December 17, 1845, shortly after its admission to the Union, the State of Florida passed an act (Chapter 34) prohibiting non-residents without a license from taking fish in Florida waters for export or sale. This act was superseded on February 12, 1861 by an act (Chapter 1121) which prohibited non-citizens of the State without a license from taking fish or turtle "on the coast, or in any of the seas, bays, rivers, creeks or harbors, or within a marine league of the coasts of said State" for export or sale. In 1893 the State passed an act (Chapter 4212) prohibiting non-citizens of the United States from catching food fishes for sale or export "in the public waters of the State" or without a license from taking "any fish within the jurisdiction of the State" for other than their own individual use. And in 1915 the State passed an act (Chapter 6877) declaring "all fish in the rivers, bayous, lagoons, lakes, bays, sounds and inlets bordering on or connected with the Gulf of Mexico or the Atlantic Ocean, or in the Gulf of Mexico or Atlantic Ocean, within the jurisdiction of the State of Florida" to be, and to continue and remain, the property of the State, to be taken and used by citizens and non-citizens under the restrictions and conditions imposed by the Act. It will be seen that all of these acts relate to the

taking of fish within the "public waters of the State" or "within the jurisdiction of the State" without indicating except in one instance the distance from the coast to which those waters or that jurisdiction extended. And in the Act of 1861 which did specify that distance it was stated to be one marine league. The reference to "bays" in some of these acts was certainly inadequate to refer to the large expanse of the Gulf of Mexico which the State of Florida now claims as a bay. These acts appear to furnish little ~~or~~ no support for a finding that the State exercised authority in that area.

In 1957, subsequent to the enactment of the Submerged Lands Act, the State of Florida passed an act (Chapter 57-358) prohibiting shrimping by anyone in certain portions of the area with which we are here concerned, which the director of the Department of Conservation was authorized to close from time to time in the interest of conserving shrimp. These areas are described as the Tortugas shrimp bed. This Act was amended in 1961 (Chapter 61-470), and further amended in 1970 (Chapter 70-163) to extend the area of the Tortugas shrimp bed.

In 1963 the State enacted the Florida Territorial Waters Act (Chapter 63-202) the purpose of which was to exercise and exert full sovereignty and control over the territorial waters of the State. Section 4 of the Act made it unlawful for any unlicensed alien vessel to take any natural resource of the State's "territorial waters, as such waters are

described by article 1 of the Constitution of Florida." It will be recalled that in 1963 the constitutional boundaries which described and delimited the territorial waters of the State were those set out in the 1962 Constitutional amendment and on the Gulf coast ran three marine leagues offshore from the Dry Tortugas, the Florida Keys and the mainland of the State. The Florida Territorial Waters Act, as enacted in 1963, accordingly did not purport to apply to the area beyond the three-league limit which is here in dispute.

Randolph Hodges, Executive Director of the Florida State Department of Natural Resources, testified that between 1957 and 1968 his department considered the State boundary north of the Keys to begin at the Dry Tortugas and run generally parallel with the Keys along their northern side back toward the mainland. It was in 1968, as we have seen, that the Constitutional boundary was extended out into the Gulf to enclose the entire area here in question. It seems clear from the evidence that the State of Florida has never, before or since 1968, seized a foreign vessel in the disputed area beyond the three-league limit for violating its laws. Mr. Hodges so testified and Dr. Samuel Proctor, another witness for the State, corroborated this fact. The nearest approach to a suggesiton of such action is a statement in the complaint filed on December 18, 1970 by the United States against the State of Florida in the United States District Court for the Northern District of Florida, Civil Action No. 1672, Tallahas-

see, that the State of Florida was threatening to arrest foreign boats fishing for shrimp in the area in dispute. It was not alleged, however, that the State had actually done so.

The only other evidence in support of the State's claim to the area in dispute which need be mentioned is the fact that the State on October 4, 1941 granted an option to lease large tracts of submerged lands in the area for oil exploration. Leases were subsequently granted to private individuals and corporations in 1944, 1949 and 1951. Actual exploration was conducted with negative results and the leases expired in 1964 and were not renewed. It will be seen that the leases were given only nine years, at the earliest, before the enactment of the Submerged Lands Act and have all since terminated. They do not disclose a usage sufficiently remote in time to meet the second criterion for historic inland waters. Nor do I think that they afford evidence of a use adverse to foreign nations in light of the accepted view in recent years that maritime nations have special rights in the bed of the continental shelf off their coasts.

The State of Florida is here claiming that all the waters of the Gulf of Mexico southeast of a straight line from the Dry Tortugas running due northeast to Cape Romano on the mainland are historic inland waters of the State. I am satisfied, however, that the evidence offered in support of this claim does not meet the test of being clear beyond doubt. The claim must, therefore, be rejected.

* * * * *

APPENDIX G

DEPARTMENT OF STATE
THE LEGAL ADVISER
Washington

[SEAL] April 19, 1974

Mr. Wallace H. Johnson
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Johnson:

I am writing in response to your letter of March 28, 1974, informing me of the Ninth Circuit Court of Appeals decision in *United States* v. *State of Alaska*, C.A. 9, No. 73-2400. Your letter indicates that the Court of Appeals affirmed the decision of the lower court, holding that the waters in Cook Inlet landward of a line drawn from Cape Douglas to the southernmost point of the Barren Islands and thence to Point Gore are internal waters of the United States, based on an historic claim.

As we have indicated previously, the Department of State has not considered Cook Inlet to be an historic bay. On May 3, 1962, Mr. Abram Chayes, the State Department Legal Adviser, informed the Department of Interior that "an extensive search of the records of the Department and of the historic records of the Government in the National Archives

has revealed no evidence that the United States has ever at any time claimed the waters of Cook Inlet as internal waters of the United States," and that it was the opinion of the Legal Adviser "that there is no basis for the assertion by Alaska of a claim to all of Cook Inlet as historic waters." Moreover, in a letter dated July 3, 1969, Mr. Leonard Meeker, then Legal Adviser, stated that "since May 1962 the United States has not asserted any claim over Cook Inlet as historic waters and has not exercised sovereignty over the area outside of the territorial sea measured from the twenty-four (24) mile closing line described in the pre-trial statement for the United States in the above case [*United States* v. *State of Alaska*]." Again on April 17, 1973, Mr. Charles Brower, Acting Legal Adviser, stated in a letter to Mr. Kent Frizzell, Assistant Attorney General, that "[s]ince the date of the letter from Mr. Meeker the United States has not asserted any claim of historic waters nor exercised sovereignty over the area of Cook Inlet outside the territorial sea measured from the . . . twenty-four mile closing line."

As you may be aware, Article 7(6) of the 1958 Convention on the Territorial Sea and Contiguous Zone recognizes the existence of "historic" bays. However, certain international law standards must be met before an historic claim may be validly asserted:

> (1) open, notorious and effective exercise of authority over the area by the State claiming the right;

> (2) continuous exercise of authority;
>
> (3) acquiescence of foreign nations in the exercise of that authority.

These standards have been noted by the Supreme Court with apparent approval, *United States* v. *Louisiana*, 394 U.S. 11, at 23, n. 27 (1969), and were recognized by the District Court, *United States* v. *Alaska*, 352 F. Supp. 815, 818-20 (D. Alaska 1972), and the Court of Appeals, *United States* v. *Alaska*, C.A. 9, No. 73-2400, at 3 (9th Cir., March 19, 1974), in this case.

Throughout the course of this litigation, this Department has followed the case closely. After nearly four years of factual development by the parties, we see no more evidence to support a claim of historic waters than existed in 1962 when the Legal Adviser found that no basis for assertion of such a claim existed. After review of the findings of fact in this case, it is our opinion that there is no evidence of any act which could establish a claim based on the applicable international criteria.

This Department is loath to make an international assertion of United States jurisdiction over areas now considered high seas on the basis of a claim which is unfounded under the applicable international standards. To do so could have serious adverse implications for our foreign relations.

The United States has considered Cook Inlet not to be internal waters in the conduct of its foreign policy. This is evidenced, first, by our reciprocal fisheries agreement with Canada, which was ne-

gotiated and renewed on the assumption by both parties that Cook Inlet contains areas of high seas. This agreement, which is beneficial to the fishermen of both countries, expires on April 24, 1974, and negotiations for its extension have been severely complicated by the decision of the Court of Appeals. In addition, the United States has distributed official charts to foreign nations that depict Cook Inlet as containing areas of the high seas, and these foreign nations have a right to rely on such charts.

Moreover, in order to discourage assertions of national sovereignty over high seas areas, which can have deleterious effects on international relations, security and commerce, we have consistently maintained the position that extensions of internal waters should be limited, and particularly that the standards for establishment of historic claims should be strictly interpreted and applied. On this basis we have protested and refused to recognize certain claims of other countries which do not meet the international standards set forth above. Any indication that we have changed our view of international law and would accept less strict compliance with these standards could encourage other States to make claims to expanded jurisdiction. Our ability reasonably to resist these claims would be hampered, and, therefore, our rights to navigation and overflight could be harmed. Furthermore, such claims could detrimentally affect our ability to reach a satisfactory multilateral agreement which achieves our oceans objectives in the Law of the Sea Conference.

As you may know, the United States is heavily involved in negotiations for the Law of the Sea Conference, which begins its substantive session in Caracas, Venezuela, on June 20, 1974. A major objective of the United States in this Conference is to achieve agreement on narrow limits of national sovereignty in the ocean, coupled with agreement on appropriate coastal state rights over certain coastal resources beyond such limits which do not impair navigation, overflight, and other traditional freedoms of the high seas. We have strongly opposed extensions of jurisdiction by other countries, because it is our opinion that a proliferation of claims at this time could seriously impair the likelihood of a successful Conference. In light of these factors, this Department believes the United States Government should not make assertions of sovereignty on the high seas which are at variance with past application of international law by the United States.

For the reasons stated above we strongly request that you petition the Supreme Court for a writ of certiorari in this case, and that you seek appropriate action by the courts to prevent enforcement against foreign nations until a final decision has been reached on appeal. In this connection, I should note that halibut fishing season in this area begins on May 17, 1974, and that seizure of a foreign fishing vessel in Cook Inlet would be seriously inconsistent with United States policy, would impair our efforts to negotiate a solution favoring narrow limits of national sovereignty in the Law of the Sea Conference, and would

harm our relations with other States concerned. Such harm would not be remedied by a later reversal of the Circuit Court decision.

Please communicate with me again if this Office can provide further information or assistance in this matter.

Sincerely,

/s/ Carlyle E. Maw
CARLYLE E. MAW

APPENDIX H

AFFIDAVIT

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

Stuart Blow, being duly sworn, deposes and says:

1. That he is Acting Special Assistant to the Secretary of State for Fisheries and Wildlife and the Acting Coordinator of Ocean Affairs on behalf of the United States.

2. That he is the senior Departmental adviser on policy formulation and action involving foreign fishing operations off the coast of the United States and for safeguarding the rights and interests of American fishermen on the high seas and off the coasts of other countries; that he has primary responsibility for formulating and negotiating international treaties and agreements relating to fisheries.

3. That on behalf of the United States he participated in negotiations which established the first Reciprocal Fisheries Agreement between the United States and Canada in 1970.

4. That he has participated in fisheries negotiations with Canada on behalf of the United States for 16 years.

5. That in fisheries negotiations conducted during that period the United States and Canada always assumed that Cook Inlet contained high seas.

6. The Reciprocal Fisheries Agreement with Canada permits fishing by Canadian vessels and crews in high sea areas over which the United States claims fisheries jurisdiction and fishing by United States vessels and crews in high sea areas over which Canada claims fisheries jurisdiction.

7. That the Reciprocal Fisheries Agreement permits United States vessels to fish in extensive areas on both the Pacific and Atlantic coasts from which Canada excludes vessels of other nations.

8. That Canada claims that Canadian vessels and crews fished for halibut in the contiguous fisheries zone in Cook Inlet both prior and subsequent to the time the United States entered the Reciprocal Fisheries Agreement with Canada.

9. That both Canada and the United States negotiated the 1970 Reciprocal Fisheries Agreement in the belief that an area of high seas within Cook Inlet had been designated as a contiguous fisheries zone within which foreign fishermen could obtain rights to fish on a regular basis only by terms of an international agreement to which the United States is a party.

10. That the existing Reciprocal Fisheries Agreement permits Canadian fishermen to fish for halibut in the United States contiguous fisheries zone within Cook Inlet.

11. That the Reciprocal Fisheries Agreement with Canada was to have expired by its terms on April 24, 1974.

12. That the Reciprocal Fisheries Agreement provided an opportunity for extension and modification after consultation between the parties but prior to termination on April 24, 1974.

13. That he consulted with the Canadian Government in an effort to obtain a one-year extension of the Reciprocal Fisheries Agreement.

14. That the Canadian Government refused to proceed with a one-year extension of the Reciprocal Fisheries Agreement which would take into account the decision by the United States courts that Cook Inlet is historic internal waters because the United States refuses to recognize any of Canada's claims to prevent foreign fishing in areas of high seas within "fishery closing lines."

15. That Canada refused to renew the Reciprocal Fisheries Agreement for the additional reason that the decision of United States courts that Cook Inlet is inland waters prohibits Canadian halibut vessels from fishing anywhere within Cook Inlet and alters a fundamental condition upon which the Agreement was originally entered.

16. That the Canadians indicated that it will in all likelihood be impossible to renegotiate the Reciprocal Fisheries Agreement in its present terms if the Reciprocal Agreement lapses.

17. That Canada has agreed to a temporary extension of 14 days to permit the United States to seek a stay to prevent the decision of United States courts from terminating the Reciprocal Fisheries Agreement.

18. That if the Reciprocal Fisheries Agreement lapses because the United States is unable to obtain a stay within the period of the temporary extension it is very likely that Canada will exclude American vessels and crews from fishing within its reciprocal fisheries area, straight baselines and historic waters on both the Pacific and Atlantic coast of Canada.

19. That the threat of seizures of American vessels will create a conflict between the United States and Canada with respect to fisheries jurisdiction.

20. That conflict between the United States and Canada with respect to Canada's claim to jurisdiction within "fisheries closing lines" has been avoided by permission extended to United States vessels to fish within those lines by the Reciprocal Fisheries Agreement.

21. That numerous United States fishermen depend for their livelihood upon permission to fish within areas over which Canada claims a right to exclude foreign fishermen.

22. That the livelihood of numerous United States fishermen will be seriously damaged by the lapse of the Reciprocal Fisheries Agreement and the resulting conflict between United States and Canada.

23. That the lapse of the Reciprocal Fisheries Agreement will have a detrimental effect upon other bilateral and multilateral fisheries treaties to which both Canada and the United States are parties.

24. The lapse of the Reciprocal Fisheries Agreement and the irreparable damage to foreign relations concerning fisheries and other oceans matters

which will occur if it does lapse cannot be prevented unless a stay of the decision of United States courts that Cook Inlet is internal waters is obtained.

/s/ Stuart Blow
STUART BLOW

Subscribed and sworn to before me this 30 day of April, 1974.

/s/ Yvonne B. Shepard
YVONNE B. SHEPARD
Notary Public in and for
the District of Columbia

My Commission expires 9/30/78.

[SEAL]

APPENDIX I

AFFIDAVIT

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

John R. Stevenson, being duly sworn deposes and says:

1. That he is the Special Representative of the President for the Law of the Sea Conference and the Chief of Delegation with the rank of Ambassador; that he has held this position since August 6, 1973.

2. That he is the senior United States representative and negotiator in the Third United Nations Conference on the Law of the Sea, which will begin its substantive session in Caracas, Venezuela on June 20, 1974; that he has primary responsibility for United States participation in the formulation and negotiation of a Law of the Sea treaty; and he has worked and continues to work closely with the senior negotiators of other countries in carrying out his responsibilities to attempt to negotiate a successful treaty which will meet United States objectives.

3. That from July 14, 1969 through December 31, 1972, he was the Legal Adviser of the Department of State, during which time he was also active in preparatory negotiations and formulation of United States policy for the Law of the Sea Conference.

4. That the success of the negotiations on fisheries will influence negotiations on other issues such as navigation, passage through straits and jurisdiction over seabed resources and will have an effect on the success of the Conference as a whole.

5. That Canadian cooperation in the Law of the Sea negotiations is important to the United States in achieving an acceptable solution on fisheries at the Conference.

6. That Canada claims fisheries jurisdiction within "fisheries closing lines" which extend seaward a great distance from its coast.

7. That the United States does not recognize Canada's claim to fisheries jurisdiction within "fisheries closing lines."

8. That the bilateral Reciprocal Fisheries Agreement with Canada has avoided conflict between United States and Canada with respect to fisheries jurisdiction by permitting United States fishermen to fish inside Canada's "fisheries closing lines."

9. That Canada is unlikely to renegotiate or renew the Reciprocal Fisheries Agreement if the United States is unable to prevent Cook Inlet from being closed to foreign fishing as a result of United States Court decisions that Cook Inlet is historic inland waters.

10. That if the Reciprocal Fisheries Agreement lapses Canada may well enforce fisheries jurisdiction within its "fisheries closing lines" and might seize United States fishing vessels within those areas.

11. That in order to maintain its position with respect to the rights of United States fishermen, the United States would have to oppose Canadian enforcement of its fisheries jurisdiction within its "fisheries closing lines."

12. This could lead to a serious bilateral confrontation with respect to fisheries jurisdiction between the United States and Canada and would make it very difficult for the United States to cooperate effectively with Canada on a multilateral solution to fisheries problems at the Caracas Conference.

13. This would be most unfortunate since in the past close cooperation between the Canadian and United States Delegations in the preparatory committee for the Law of the Sea Conference and United Nations General Assembly has been very helpful in achieving objectives important to our national interest.

14. That a recall and stay of mandate of this Court pending the resolution of this dispute will permit the United States and Canadian Governments to continue their close cooperation in the Law of the Sea negotiations at the very critical Conference this summer in Caracas.

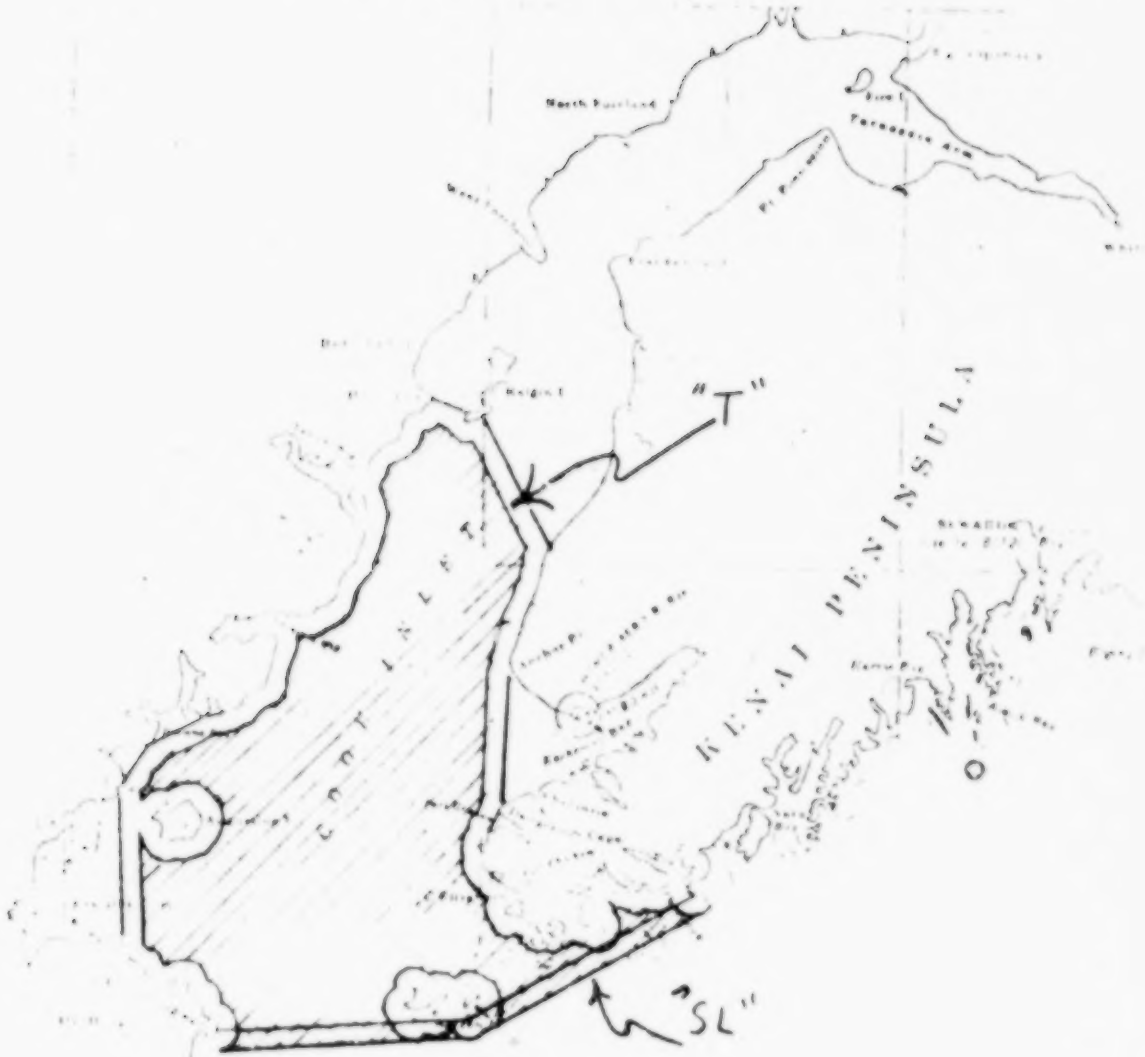
/s/ John R. Stevenson
JOHN R. STEVENSON

Subscribed and sworn to before me this 26th day of April, 1974.

/s/ Jacquelyn C. Jett
JACQUELYN C. JETT
Notary Public in and for
the District of Columbia

My Commission expires Nov. 30, 1978.

[SEAL]



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HATCHED AREA SHOWS
AREA IN DISPUTE

APPENDIX J

Supreme Court, U. S.
FILED
APR 2 1975
MICHAEL RODAK, JR., CLERK

APPENDIX
Vol. I

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1888

UNITED STATES OF AMERICA,

Petitioner,

—v.—

STATE OF ALASKA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CCURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JUNE 17, 1974
CERTIORARI GRANTED DECEMBER 9, 1974

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1888

UNITED STATES OF AMERICA,
Petitioner,

—v.—

STATE OF ALASKA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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4/18/67	Deft's original answer
1/ 6/72	Pre-trial Order
1/17/72	Court Minutes re trial by Court—1st Day
1/18/72	Pltf's offered depositions
1/18/72	Court Minutes re trial by Court—2nd Day
1/19/72	Court Minutes re trial by Court—3rd Day
1/20/72	Court Minutes re trial by Court—4th Day
1/21/72	Deft's offer of depositions
1/21/72	Court Minutes re trial by Court—5th Day
1/24/72	Court Minutes re trial by Court—6th Day
1/25/72	Deft's submission of deposition of Bernard Skud by way of cross examination
1/25/72	Portions of deposition of Jim H. Branson submitted by deft by way of cross examination
1/25/72	Court Minutes re trial by Court—7th Day
1/26/72	Court Minutes re trial by Court—8th Day Exhibit and witness list attached.
5/ 3/72	Offer of deposition of Abram Chayes by pltf Deft's objections to same & Court's rulings
5/ 3/72	Pltf's offer of deposition of Raymond T. Yingling, deft's objections & Court's ruling on same
5/ 3/72	Pltf's offer of deposition of Jared Carter, deft's objections & Court's ruling on same
5/ 3/72	Ptlf's offer of deposition of William Terry, Deft's objections & Court's ruling on same

Date	Proceedings
5/ 3/72	Deft's offer of deposition of Ronald C. Naab (2nd deposition), pltf's offer by way of cross examination, Deft's objections to cross examination, deft's offer of redirect examination, and Court's rulings on same
5/ 3/72	Deft's offer of deposition of John B. Skerry, Pltf's offer by way of cross examination, & deft's response to cross examination with no ruling by the Court
5/ 3/72	Deft's Offer of deposition of William T. Studdery, pltf's offer by way of cross examination, deft's offer of redirect with no ruling by the Court
5/ 3/72	Fltf's offer of deposition of Thomas Costello, deft's objection, pltf's response to objections & ruling by the Court.
5/ 3/72	Deft's Offer of deposition of Harry L. Rietze, pltf's offer by way of cross examination, deft's objections to cross examination & Courts rulings
5/ 3/72	Deft's offer of deposition of H. C. Scudder, Pltf's offer by way of cross examination, deft's offer by way of direct examination, no ruling by the Court required
5/ 3/72	Pltf's offer of deposition of James Branson, deft's objections, Deft's offer by way of cross examination, pltf's response to cross examination, and Court's rulings
5/ 3/72	Pltf's offer of deposition of Robert Hodgson, deft's objections, and Court's rulings
5/ 3/72	Pltf's offer of depo of Jack O'Connor, Deft's objections, & Court rulings
5/ 8/72	Pltf's offer of deposition of Bernard Skud, Deft's objections, Deft's offer by way of cross examination, & pltf's responses to cross examination

Date	Proceedings
5/ 8/72	Pltf's offer of deposition of C. D. Swanson, Deft's offer by way of cross examination, & pltf's response to cross examination
5/ 8/72	Pltf's offer of deposition of Walter Kirkness and deft's objections to same
5/ 8/72	Pltf's offer of deposition of Theron Smith
5/ 8/72	Pltf's offer of deposition of John Gharrett, & Deft's Objections
5/ 8/72	Pltf's offer of deposition of Ronald C. Naab, Deft's objections to same
5/ 8/72	Pltf's offer of deposition of Holger Larsen, Deft's objections to same, Deft's offer by way of cross examination
5/22/72	Pltf's offer of deposition of Bernard Skud, deft's objections, Deft's offer by way of cross examination, Pltf's responses to cross examination, & Court's rulings
5/22/72	Pltf's offer of deposition of C. D. Swanson, Deft's offer of cross examination, Pltf's response to cross examination, no Court's ruling
5/22/72	Pltf's offer of deposition of Walter Kirkness, Deft's objections, & Court's ruling
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5/22/72	Pltf's offer of Deposition of John Gharrett Deft's objections & Court's ruling
5/22/72	Pltf's offer of deposition of Ronald C. Naab, Deft's objections & ruling of Court
5/22/72	Pltf's offer of deposition of Holger Larsen, Deft's objections, Deft's offer by way of cross examination, Pltf's response to cross examination, & Court's rulings

Date	Proceedings
6/ 8/72	Pltf's post-trial brief
6/30/72	Deft's post-trial brief
7/26/72	Pltf's reply brief
12/14/72	Memorandum and order dismissing pltf U.S.A.'s complaint to quiet title to designated areas of lower Cook Inlet; judgment may be entered in favor of deft State of Alaska; that counsel for deft review proposed findings of fact & conclusions of law and judgment in the light of this memorandum & present appropriate findings, conclusions & judgment to the Court
1/29/73	Findings of fact and conclusions of law
1/29/73	Judgment that pltf's complaint is dismissed
2/ 8/73	Pltf's motion to clarify, amend and add to findings of fact and conclusions of law
3/28/73	Deft's response to pltf's motion to clarify, amend and add to findings of fact and conclusions of law
4/ 9/73	Order denying motion of pltf to clarify, amend and add to findings of fact and conclusions of law
5/ 1/73	Pltf's notice of appeal from the judgment entered 1/29/73 which became final 4/9/73
5/ 1/73	Pltf's motion for stay upon appeal
5/ 1/73	Pltf's memorandum in support of motion for stay upon appeal
5/ 1/73	Deft's response to pltf's motion for stay upon appeal
5/ 9/73	Order granting pltf's motion for stay upon appeal, and that stay affects only actions of pltf pertaining to the disposition of natural resources of the seabed and subsoil of Cook Inlet, and has no affect on the right of deft. to regulate fishing by U.S. Citizens & citizens of other nations within the area of lower Cook Inlet

Date	Proceedings
5/25/73	Stipulation and motion for amended stay
5/29/73	Amended stay order, that the motion of pltf for Stay upon appeal is granted
7/13/73	Stipulation concerning omissions from record on appeal
9/19/73	Appellant's Brief on Appeal filed
10/16/73	Joint motion for expedited hearing filed
11/ 6/73	Appellee's Brief on Appeal filed
11/21/73	Appellant's Reply Brief filed
12/ 4/73	Order granting motion for expedited hearing
1/ 9/74	Appellee's Supplemental Brief filed
3/19/74	Ct of Appeals Opinion
5/ 4/74	Judgment of Ct. of Appeals entered
5/ 8/74	Appellant's Application for Recall & Stay of Mandate filed
5/14/74	Order for recall and Stay of Mandate
6/ 7/74	Appellant's motion for extension of stay of Mandate
6/12/74	Order for extension of stay of mandate
6/17/74	Petition for Writ of Certiorari to U.S. Court of Appeals for the Ninth Circuit
7/18/74	Respondent's Brief in opposition to Petition for Certiorari.
12/ 9/74	Petition for a Writ of Certiorari granted

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Civil Action No. A-45-67

[Filed March 20, 1967]

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA, DEFENDANT

COMPLAINT TO QUIET TITLE AND FOR INJUNCTIVE RELIEF

The United States of America, by and through the undersigned United States Attorney, acting at the direction of the Attorney General of the United States and at the request of the Department of the Interior, complains of the defendant above named, and for cause of action alleges:

I

The Court has jurisdiction over this action pursuant to Title 28, United States Code, section 1345.

II

At all times herein material, as against the State of Alaska the subsoil, seabed, and natural resources of Cook Inlet, more than three geographical miles seaward from the line of mean lower low water and from the line marking the seaward limit of inland waters, have appertained and now appertain to the United States, and have been and now are subject to its exclusive jurisdiction, control, and power of disposition.

III

The line marking the seaward limit of the inland waters of Cook Inlet is a line from the easternmost

extremity of the mean lower low-water line on Harriet Point, at latitude 60° 23′ 39″ N., longitude 152° 12′ 52″ W., to the nearest point on the mean lower low-water line on Kalgin Island, at latitude 60° 21′ 50″ N., longitude 152° 04′ 45″ W., and a line from a point on the mean lower low-water line on Kalgin Island at latitude 60° 20′ 36″ N., longitude 152° 00′ 14″ W., to a point on the mean lower low-water line on the eastern shore of Cook Inlet at latitude 60° 04′ 15″ N., longitude 151° 38′ 45″ W.

IV

The State of Alaska claims some right, title, or interest in or to said subsoil, seabed, and natural resources adverse to the United States, and by public notice has invited competitive bids for an oil and gas lease of a portion of said subsoil and seabed, and has announced that said lease sale will be held on March 28, 1967.

V

By reason of the foregoing, the State of Alaska has cast a cloud on the rights and title of the United States and, unless restrained by this Court, will continue to do so and will create lease claims adverse to the United States and will interfere with the proper and orderly development of the mineral resources by the United States, for all of which the United States has no adequate remedy except by this action.

Wherefore, the United States prays for relief as follows:

1. That this Court issue a temporary restraining order, directing the defendant not to issue any mineral lease affecting or purporting to affect any of the submerged lands of Cook Inlet, more than three geographical miles seaward from the line of mean lower low water and from the line described in paragraph III hereof;

2. That after hearing, this Court issue a preliminary injunction restraining the defendant from issuing any mineral lease affecting or purporting to affect any of the submerged lands of Cook Inlet, more than three

geographical miles seaward from the line of mean lower low water and from the line described by paragraph III hereof, pending entry of final judgment herein;

3. That this Court enter judgment declaring that as against the State of Alaska the subsoil, seabed and natural resources of Cook Inlet, more than three geographical miles seaward from the line of mean lower low water and from the line described in paragraph III hereof, appertain to the United States and are subject to its exclusive jurisdiction, control, and power of disposition, and that the State of Alaska has no title thereto or interest therein, and permanently enjoining the defendant from interfering with said subsoil, seabed, and natural resources; and

4. For such other and further relief as the Court may deem proper.

/s/ Richard L. McVeigh
RICHARD L. MCVEIGH
United States Attorney

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Civil Action No. A-45-67

[Filed April 18, 1967]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

STATE OF ALASKA, DEFENDANT

DEFENDANT'S ORIGINAL ANSWER

Now comes the State of Alaska by and through its Attorney General and files this, its original answer to plaintiff United States of America's Complaint.

I.

Defendant admits the allegations in Paragraph I of plaintiff's Complaint.

II.

Defendant denies the allegations in Paragraph II of plaintiff's Complaint.

III.

Defendant denies the allegations contained in Paragraph III of plaintiff's Complaint.

IV.

Defendant admits the allegations contained in Paragraph IV of plaintiff's Complaint.

V.

Defendant denies the allegations contained in Paragraph V of plaintiff's Complaint.

FIRST DEFENSE

That the area in contention lies within what is known as the Cook Inlet. Cook Inlet is historic inland water with a line of closure extending from Cape Douglas to Point Bede, Alaska. That, being historic water, the Cook Inlet, its waters, subsoil, seabed, and natural resources are owned by the sovereign State of Alaska.

SECOND DEFENSE

The Complaint fails to state a cause of action against

WHEREFORE defendant State of Alaska prays as follows:

(1) That this Court enter judgment declaring that as against the United States of America the waters, subsoil, seabed and natural resources of Cook Inlet as described in the First Defense of this Answer are owned by the sovereign State of Alaska and that the United States of America has no title therein; and

(2) That the Complaint be dismissed and the plaintiff be granted no relief and costs be awarded to the defendant; and

(3) For such other and further relief as the Court may deem proper.

D. A. BURR
Attorney General

/s/ Ralph G. Crews
Ralph G. Crews
Assistant Attorney General

• • • •

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Civil No. A-45-67

[Filed January 6, 1972]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

STATE OF ALASKA, DEFENDANT

PRE-TRIAL ORDER

• • • •

II

Stipulations

The parties have agreed to certain facts. They are listed below. The agreement to these facts as uncontested is not a concession by either party that such facts are relevant.

1. The breadth of the territorial sea of the United States is three nautical miles except in the case of historic territorial sea bays.

2. The distance between Cape Douglas and either Point Bed, Cape Elizabeth, or Point Gore exceeds 40 nautical miles.

3. The only court actions brought by the State of Alaska as a result of law enforcement actions against Japanese fishing boats in April of 1962 for fishing in Shelikof Strait were:

a. *State of Alaska* v. *Mine Sutoshi*, No. 62-141 Cr.
b. *State of Alaska* v. *Mongo Hanasaki*, No. 62-142 Cr.
c. *State of Alaska* v. *Higashima Tadao*, No. 62-144 Cr. that were brought in the Superior Court of the State of Alaska.

4. All three of the cases referred to in paragraph 3 above were dismissed on motion.

5. During but not limited to the years through to the present, the United States had been a party to international treaties and conventions established for the purpose of regulation and conserving the fisheries on the high seas.

6. Japanese fishermen fish on the high seas off the Coast of Alaska in the general vicinity of Kodiak Island and the Kenai Peninsula.

7. Canadian fishermen fish on the high seas in the general vicinity of Kodiak Island and the Kenai Peninsula.

8. Russian fishermen fish on the high seas in the general vicinity of Kodiak Island and the Kenai Peninsula.

9. The memorandum dated April 28, 1953 contained in United States Exhibit No. 77 was written by Albert M. Day who, at the time, was Director of the United States Fish and Wildlife Service and responsible for the enforcement of the fisheries laws in Alaska. That memorandum was written to the Regional Director of the Fish and Wildlife Service in Juneau, Alaska.

10. The memorandum dated May 8, 1953, contained in United States Exhibit No. 77 was written by Dan H. Ralston, Law Enforcement Supervisor of the U.S. Fish and Wildlife Service in Juneau, Alaska, to the law enforcement agents in Alaska listed on the memorandum.

11. The documents identified in paragraphs 11 and 12 were transmitted to and received by the Anchorage Office of the Fish and Wildlife Service.

12. The sum of the line segments drawn on United States Exhibit No. 73 from a point north of Ninilchik to Kalgin Island and from Kalgin Island to Harriet Point equals 24 nautical miles.

13. The entrance to the following bays is generally the line drawn between points on the shores of those bays as shown on United States Exhibit No. 73:

a. Kachemak Bay
b. Oil Bay

c. Illiamna Bay
d. Urus Cove
e. Port Graham and English Bay
f. Koyuktolik Bay.

14. A nautical or geographical mile is equal to 6,076.11549 international feet approximately.

15. Except in the case of historic bays, the position of the United States as to the appropriate length of a baseline at the mouth of a bay from which the three mile limit is measured has been:

a. Before 1912, 6 miles
b. 1912-1962, 10 miles
c. After 1962, 24 miles.

16. Cook Inlet is a land-locked body of water.

17. Cook Inlet is clearly defined.

18. Cook Inlet is doubly flanked by territory of the United States.

19. Cook Inlet is well marked by prominent headlands.

20. Cook Inlet's tributaries and streams originate in and proceed only through Alaska.

21. Cook Inlet is not a watercourse between nations.

22. Cook Inlet has been mapped innumerable times since the Fifteenth Century.

23. American fishermen who have fished in Cook Inlet believed and continue to believe that foreign nationals are not permitted to fish in Cook Inlet; that they considered and continue to consider Cook Inlet is included within the territory of the United States; and that they considered and continue to consider Cook Inlet to be inland waters for the application of the Coast Guard inland rules of the road.

24. Tidelands are lands between mean low water and mean high water.

25. United States Exhibit No. 73 is on sale to the general public by the National Ocean Survey in Rockville, Maryland. These documents went on sale subsequent to the filing of this lawsuit.

26. The steamer ZAPORA referred to in the telegrams between O'Malley and Studdert, Alaska Exhibit No. B-E at pages 960 and 961 of the Appendix to the State of Alaska's Trial Brief, was an American vessel owned by the Booth Fisheries Company, Chicago, Illinois, at the time of the incident referred to in those telegrams.

27. The steamer NEW ENGLAND referred to in the telegrams between O'Malley and Studdert, Alaska Exhibit No. B-E at pages 960 to 961 of the Appendix to the State of Alaska's Trial Brief, was an American vessel owned by the American company, the New England Fish Company, at the time of the incident referred to in those telegrams.

28. The State of Alaska offered certain tracts for competitive oil and gas leasing prior to this litigation. Said tracts are within the disputed area of Cook Inlet.

29. Ships from Canada, Panama, Korea and Japan frequently enter Cook Inlet to pick up and discharge cargo at Cook Inlet ports.

30. The 1906 Act for protection and regulation of the fisheries of Alaska gave the Secretary of Commerce authority to regulate salmon fishing within 500 yards of the mouths of Alaskan streams and rivers.

31. Cook Inlet is not a river. However, a map dated 1867 published by the Coast and Geodetic Survey identifies Cook Inlet as a "Cook's River."

32. Exhibit A to this Draft Order is identical to United States Exhibit No. 73.

DATED at Anchorage, Alaska, this 6th day of January, 1972.

/s/ James A. von der Heydt
James A. von der Heydt
District Judge

Approved as to Form:

For the Plaintiff

Jon Charney

By /s/ Peter Y. Page
Attorney, Department of Justice
Washington, D.C.

For the Defendant

JOHN E. HAVELOCK
Attorney General

By /s/ Charles K. Cranston
Charles K. Cranston
Assistant Attorney General

RELEVANT PORTIONS OF
TRANSCRIPT OF TRIAL

PLAINTIFF'S WITNESSES

[152] CHARLES HOWARD BALTZO

being first duly sworn upon oath, testified as follows.

• • • •

DIRECT EXAMINATION

BY MR. CHARNEY:

• • • •

[159] Q What was the report as to the location of that vessel?

A The report was that it was definitely far over three miles. There was no question that it was a marginal case. It was much more than three miles from shore, and nitely up inside of Cook Inlet.
my recollection is that it was on the east side of Cook Inlet somewhere off the Kenai Peninsula. It was defi-

Q Okay, go on.

A And so the only question was, should we take action against this vessel that was fishing in U.S. waters, or should we not? And because we had been talking about the matter before, why, after discussing the particular circumstances in this case it was our consensus, and I decided that we should take no action against the Canadian vessel because it was a vessel of a foreign national, namely Canada, and that we did not feel that our jurisdiction extended beyond the so-called three-mile limit or more than three miles from shore, and this boat clearly was beyond that distance.

Q What was your position at that time?

A At that time I was acting regional director because the regional director, Rhode, was not in the office. That is why they came to my office with it first.

Q What happened after that?

[160] A One of these two men, I am not sure which, went into the radio room next to my office and got Agent Bronson on the radio again, let's see, we had two-way communications with all our aircraft, and told him to take no action against the halibut boat.

Q Do you know if any action was taken against the halibut boat?

A No, it was not.

• • • •

[172] CROSS EXAMINATION

BY MR. PHILLIPS:

Q Just to go back for just a moment, you served as the assistant [173] regional director of the Fish and Wildlife Service in Alaska from 1950 to 1958; is that correct, sir?

A I believe it was through 1959.

Q All right, sir, a period of about nine years, then?

THE COURT: You must answer aloud.

THE WITNESS: Yes.

BY MR. PHILLIPS:

Q During that time, Mr. Baltzo, you, in effect, were the number two man insofar as the Fish and Wildlife Service was concerned, in the whole of Alaska?

A Yes.

Q And I believe among your responsibilities, if I understood you correctly, was the responsibility for administering the fishery laws—fishing laws?

A Yes.

Q And I suppose as a man with that responsibility and with that position, you had some discretion and latitude, did you not?

A Yes.

Q As a matter of fact, you had what might be described as wide latitude and a high degree of autonomy with reference to what you referred to, at least on your deposition, as field program implementation decisions and enforcement; is that correct?

A Yes.

[174] Q Now, of course, having that responsibility, Mr. Baltzo, it was necessary that you know the fishing laws and the fishing regulations; is that correct, sir?

A Yes.

Q And as a matter of fact, you had to know them in some detail?

A Yes.

Q And you had to interpret them in order to know how to enforce them; is that correct, sir?

A To the best of my ability, I was supposed to do that, yes. They were very complex.

Q And of course, without asking you to be immodest, you had an expertise about these laws that an ordinary person like myself perhaps would not have; isn't that correct, sir?

A Yes.

Q Now, I noted in your testimony that you also have had some experience in enforcement work, first, as I recall, in the State of Washington where you had actual training, and subsequently experience here in Alaska; is that correct, sir?

A Yes.

Q Now, in doing enforcement work, is it occasionally necessary for an enforcement officer, say a U.S. enforcement officer, to board a fishing vessel?

A If a vessel is sighted or caught, or however you want to express it, in the act of violating a fishing regulation, it may be necessary to board it if it's necessary to gain [175] enough evidence for a conviction.

Q Yes, sir, and would you tell me generally, sir, how this boarding operation is carried out, just generally?

A Well, the patrol boat or airplane that makes the apprehension would draw within speaking distance of the vessel in violation or suspected violation, and to the extent possible there would be a dialogue between the two, the arresting officer and the suspected fisherman. And if the results of this dialogue were not sufficient to produce the evidence that the arresting officer needed, he would then ask permission to go aboard.

Q Yes, sir. And how is this actual boarding done? Does one vessel draw near or is tied to the other, or just how is that done, sir?

A That is right. Two vessels draw together. The arresting officer would normally step over onto the other one.

• • • •

[176] BY MR. PHILLIPS:

Q Just one or two more questions, and I don't make a great point about this, the boarding of another vessel is an act done by an agent who has credentials, does he not?

A Yes.

Q And he shows those credentials to the boat captain?

A If the boat captain asks to see them.

Q And normally, the enforcement officer is armed, is he not?

A No, he is not, not in our case. I don't know what may be the general case.

Q That is a pretty—that boarding operation is not done socially, is it, but is done in the course of the business of the enforcing agents?

A That is right.

Q And it is a pretty serious occasion, particularly when you are boarding a foreign vessel, is it not, sir?

A Yes.

• • • •

[177] BY MR. PHILLIPS:

Q May I restate my question, Mr. Baltzo, so it is this: Back in 1950 to 1959, when you were in your position, your prime interest in Alaskan fisheries was salmon fishing, was it not, sir?

A Yes, it was.

Q And as a matter of fact, if anyone had used the term "Alaskan fisheries" to you, you would have immediately thought of salmon fishing, would you not, sir?

A Well, it all depended on the context in which the reference was made.

Q Well, you thought of salmon as of far greater importance than other types of fish such as halibut and shrimp and trawl fish; isn't that correct, sir?

A That is correct.

Q And you realized, undoubtedly, the importance of the salmon fisheries of Cook Inlet to the people of America, the United States, and particularly the people of Alaska, did you not, sir?

A Yes.

Q And your prime job and your prime objective, then, in enforcing these fishing regulations was to conserve and manage the salmon fishing, was it not, sir?

[178] A That was our primary job, right, insofar as fisheries were concerned.

Q And as a matter of fact, sir, you realize that if these salmon fisheries here in Alaska were depleted that that would result in a great and irretrievable loss to the economy of this country and to the people of Alaska, isn't that so?

A Yes.

Q And of course, I would assume that as a government employee, your prime loyalty was to the people of the United States and the people of Canada, isn't that correct, sir?

A The people of the United States and who?

Q And the people of Alaska. They were people of the United States, were they not, Alaskans?

A Yes. I don't think we felt any particular loyalty to the citizens of Alaska as such, but as citizens of the United States, yes.

Q But, certainly, you weren't holding any greater loyalty to foreigners than you were to the people of Alaska, were you?

A Oh, of course not.

Q As I understand your testimony, up until the early 1950's you had known of no foreign fishing activity of any kind in Cook Inlet, had you?

A I can't recall that I did.

Q Yes, sir. And the only fishing by foreigners that you knew about was fishing for halibut, and that started in the early [179] 1950's, as I understand your testimony.

A No, it is probably in the early 1950's that I became aware that Canadians were fishing in Alaskan, or if you might say off the coast of Alaska, but I certainly wouldn't say that that is when the fishery started. It may have been going on. I believe it was going on for some time prior to that.

Q You didn't know of it, though, sir?

A I didn't know of it.

Q And that which you did know of, which occurred in the '50's, was a very rare thing, was it not, sir?

A Well, I couldn't say that we knew whether it was rare or not, that the incidents that we did know of were rather rare. This was not a time of intensive patrol. The salmon fisheries occurred at a much later date than the halibut fisheries.

Q Now, this incident that you spoke about, let me make quite sure that we all understand you. It was a Canadian boat incident, right?

A Yes.

Q It was fishing, as best you recall, outside three miles from shore—

A Yes.

Q —in Cook Inlet, and it was fishing for halibut—

A Yes.

Q —and not for salmon?

A Yes.

[180] Q Now, you have referred to your deposition. Mr. Charney, you remember, arranged it back in early 1971, March, as I recall.

A Yes, March 20, I believe.

Q And at that time, as you have done here today, Mr. Baltzo, you took an oath to tell the truth and the whole truth, did you not, sir?

A (Nodding.)

• • • •

Q Mr. Baltzo, you realized when you took that oath to tell the truth that that was a serious obligation on your part, did you not, sir?

A I certainly do.

Q And you realize that this was a serious matter insofar as the State of Alaska was concerned. Don't you

remember in the [181] course of the questioning, Mr. Cranston told you how important this case was to the State of Alaska?

A Yes.

Q And you knew that what you were saying there under oath was being written down, didn't you?

A Yes.

Q And you knew that later, we, as lawyers, and perhaps the Court, would be called upon to examine that testimony and rely upon it as being the truth?

A Yes.

Q And I believe that you have told Mr. Charney here that with the exception of a few dates and names of people that you didn't remember just where they had gone or when they had gone, that you had read your deposition and you had found that you had told the truth; is that correct, sir?

A Yes.

• • • •

[182] Q Mr. Baltzo, by way of leading up to what I am going to ask you, would you mind turning to page 41 on your deposition, and I refer you to line five on that deposition and ask you if you did not testify as follows, and I quote: "We, on our part, felt the need for conservation of the Alaska salmon fisheries was so great that we would have to lead in the direction of enforcing these regulations in order to protect the salmon runs. Unless we did, we'd have been powerless. I mean the fisheries would have been destroyed in short order by the fishing industry."

Did you not say that, sir?

A Yes, that is stated here.

Q And is that correct, sir?

A Well, let me see what the rest of this is here.

[183] MR. PHILLIPS: Just this statement here, is that a correct statement on your part, or do you want it qualified in any way?

THE WITNESS: No, that is exactly the way we felt, that was the situation.

BY MR. PHILLIPS:

Q That was true then, and it is true now, sir, as far as you are concerned?

A Well, I don't know about what the situation may be today. This has been 12 years since I have been—

Q I said so far as you are concerned, it is true?

A So far as I am concerned, it is, yes.

Q Now, don't you remember that thereafter, Mr. Cranston asked you some questions after Mr. Charney got through, and don't you recall that he asked you what the policy of your department would have been with regard to foreign vessels that you had found fishing for salmon in Cook Inlet in the waters more than three miles from the shoreline? Don't you remember questions of that type?

A Yes.

Q And don't you remember, sir—I will come back to them in a moment—don't you remember, sir, that you testified in substance that if you had found a Canadian boat or any other kind of foreign boat fishing in Cook Inlet more than three miles from the shore you would have done two things, sir? First, you would [184] have boarded the boat or had your enforcement officers do it, and you would have gotten immediately in touch with Washington by wire?

• • • •

Q Don't you remember testifying to that effect, Mr. Baltzo?

A I said if we had found the foreign fishing vessel fishing for salmon within the described waters of Cook Inlet, that we would have asked permission to board.

MR. CHARNEY: Wait a minute. More than three miles from Cook Inlet you'd have gotten immediately in touch with Washington, wouldn't you?

THE WITNESS: More than three miles from Cook Inlet.

BY MR. PHILLIPS:

Q More than three miles from the shore in Cook Inlet, you'd [185] have gotten immediately in touch with

Washington and you testified, did you not, that you would have even boarded the boat?

A I said we'd have asked permission to board.

Q All right, sir, you'd have asked permission to board it, and you'd have gotten in touch with Washington; isn't that true?

A Yes.

Q Now, Mr. Baltzo, so there is no misunderstanding between us at all, and I don't want to misquote you, let me turn to the deposition itself, or ask you to do so. I want you to look at page 57 and read your—I want to read to you your testimony beginning on line 21 of that page, and you read along with me to yourself as I read it out loud so to make sure I have read it correctly and not misquoted you, and I am now reading, "No, the fact that it was halibut would have given it somewhat lesser priority in our eyes than if it had been salmon. Our big concern in those days was the salmon fishery. When you said Alaska fisheries, well, I immediately assumed you meant salmon. Things like shrimp and halibut and trawl fish were of far less importance than they are today. Now, if a Canadian boat had been up there fishing salmon, I can't say just what we would have done, but it would have helped a little bit to have i' a more obscure fishery of less importance than if it had been the number one fishery [186] with which we were more concerned. If a Canadian had gone way up inside Cook Inlet to fish for salmon, then I am sure we would have to reach Washington."

Didn't you say that, sir?

A Yes.

Q Now, turn on over, and Mr. Cranston asked you some more questions about this. Now, turn on over to page 61, sir, and he was continuing to ask you about foreign boats fishing for salmon in Cook Inlet, and I want you—I want you to look again at line 21 on page 61. Do you find it there, sir?

A Line 21 on page 61, yes.

Q All right, and did you not say there, and I am quoting, "I would say, based on all of that, that we would not have taken any action against it, but we would

have gathered all of the information possible on the subject and referred it to Washington."

And then Mr. Cranston said, "I see," and you continued, and notice this language. "We would have identified it and may have even boarded it. In fact, I am sure we would have."

Didn't you say that, sir?

A I can say that I said that, but I believe you should read the next answer.

Q Yes, sir. I don't want to cut you off from reading anything. I will read the rest of it. "You would have boarded it," Mr. Cranston asked you. "I believe we would have, or at [187] least asked permission to board." That is what you said, was it not, sir?

A Yes.

Q And that is this type of enforcement activity that you described a moment ago when I asked you about how you enforced fishing regulations, isn't that true, sir?

A Yes.

Q Now, Mr. Baltzo, let me stop and ask you to think for a moment, if you will, sir. Now, you wouldn't have boarded that vessel or asked permission to board it just to do so to chit-chat with the boat captain, would you?

A Certainly not.

Q And let's talk about your getting in touch with Washington. You wouldn't have gotten in touch with Washington to ask Washington where the boat was, whether it was within three miles or outside of three miles, if you had your own enforcement agents already aboard the boat, would you?

A As I say, we would have gotten in touch with Washington. I didn't mean we'd do it that very moment. I mean we would have done it before the case could have been pursued further.

Q Yes, sir. I am asking you, and what would be the reason? You wouldn't be calling Washington, whatever you did, to ask Washington where that salmon boat was, would you, because you knew where it was?

A Right.

[188] Q And if it had been within three miles, you have already told this court you would have arrested the

boat captain and preferred charges against him, wouldn't you?

A Well, not exactly. What we would have done is gathered all the evidence we could, but would have turned the evidence over to the country having jurisdiction over this fishing boat.

Q And they would have prosecuted him?

A Helping them prosecute him.

Q Helping them every way you could prosecute him, wouldn't you?

A Yes.

Q Now, I want to talk to you, if you will permit me to do so, about these fishing regulations. I believe you told us on direct examination that your responsibility went so far as to from time to time include the responsibility for rewriting the regulations or recommending rewriting them; is that correct, sir?

A Yes.

Q Now, first, did I understand you to say, and it is my understanding that when you refer to territorial waters or waters over which the United States has jurisdiction, you mean by that waters within three miles of the coastline; is that correct, sir?

A No, in some—that is the case—I mean the truth in most cases, but in the case of our own American fishermen, we had [189] jurisdiction in the areas that were described in the fishing regulations, and these did not necessarily follow the three-mile limit.

Q That is what I am going to come to, Mr. Baltzo, in just a minute, but I want to first understand that generally you understand territorial waters or waters over which the U.S. had jurisdiction to mean waters within three miles of the coastline; is that right, sir? Or, if that is not what you understood, tell me what you did understand.

A No, I understood that our jurisdiction applied within the written description of the various fishing areas as they were contained in the fishing regulations and published in the Federal Register.

Q I am going to come to that, Mr. Baltzo, but let me get at it this way. Now, if our fishing—back up just a

minute. You say that you think we did have jurisdiction over Americans on the high seas, right?

A I thought we did.

Q Yes, sir, but that didn't mean just because you had jurisdiction over them that a fishing regulation applied to them. For example, you wouldn't go out 20 miles off the coast of Kodiak and arrest an American just because he was an American, would you?

A No, because we had no regulations or fishing areas that took in waters 20 miles off Kodiak.

[190] Q That's right, and so since you didn't have any regulations that pertained to fishing, say, 20 miles off Kodiak, you wouldn't have arrested that fisherman whether he be an American or a Japanese or whatever, would you?

A Not prior to 1956, we wouldn't have.

Q All right. Now, let's go—I want you to look—do you have Exhibit 75 still there before you?

A Yes, I do.

Q Mr. Baltzo—incidentally, that exhibit perhaps for the Court's benefit, I will describe, and see if it is correct that consists of some three memorandums that issued from the Alaska office and a couple of responses from Washington; is that not correct, sir?

A Well, I haven't counted them, but that sounds like it.

Q I am just getting this in general to get you and I thinking together and make it clear what you are talking about.

In the first dated memorandum there is one that is dated on March 31, 1952; isn't that correct, sir?

A Yes.

Q And that is to the Director, FWS. I assume that is Fish and Wildlife Service in Washington—

A Yes.

Q —from the regional director in Juneau, that is Mr. Rhode.

A Yes.

Q I notice while this memorandum consists of a whole page and [191] about a quarter of a page on the second page, and in order to get the sense of this and the con-

tinuity of it, you will notice that Mr. Rhode is writing to Washington, and he says here, "My question here relates only to United States fishermen on vessels registered under the United States flag." You see where I am reading?

A. Yes.

Q And this is what Mr.—obviously what Mr. Rhode is writing about. His question here relates only to United States fishermen on vessels registered under the United States flag, right?

A Yes.

Q "There is a possibility now of development of a plan by drift gill net boats to attempt to fish lower Cook Inlet without regard to our regulations for that area on the theory that the regulations do not apply beyond the three-mile limit." You see that, sir?

A Yes.

Q Now, you will notice, Mr. Rhode concludes, if you will turn over to the next page, he concludes this memorandum with what at least we, on behalf of the State, feel to be a rather significant statement, and I quote it to you. "While it may be a separate matter, I suggest terms of a proposed Japanese treaty be kept in mind while doing research on above to see what steps we might take to establish historic rights [192] in off-shore waters." Do you see that, sir?

A Yes.

Q "What steps we might take to establish historic waters." Now, I want you to turn to the answer that Mr. Rhode got. That is a memorandum back from Washington dated May 1, 1952, is it not, sir?

A Yes.

Q I want you to follow and hear me closely, Mr. Baltzo, again to get the continuity of this and to see how you people in the Fish and Wildlife Service were construing these regulations. Let me read the first two paragraphs.

"Reference is made to your memorandum of March 31, requesting information concerning the applicability of the Alaska fishery laws and regulations to waters beyond the three-mile limit. You suggest that in view of certain

court decisions, these laws and regulations might apply to our nationals wherever they are on the high seas and would not necessarily be restricted to territorial waters." Do you see that, sir?

A Yes.

Q Now, I want you to notice particularly, Mr. Baltzo, the next paragraph. "The Alaska fishery laws refer to 'waters of Alaska over which the United States has jurisdiction,' and the regulatory areas described and set apart by the regulations and to which the regulations apply are described in [193] every instance as including 'all territorial coastal and tributary waters of Alaska.'" You follow me there, sir?

A Yes.

Q Now, notice next what Mr. Seaton Thompson, this man from Washington, writes, "It is the opinion that these laws and regulations apply to fishing in the described areas only and do not apply to fishermen operating elsewhere, even though they may be American citizens on vessels registered under the American flag." You see that, sir?

A Yes.

Q Now, to go back just a moment and to get this clear, you have told us that you wouldn't arrest an American fishing 20 miles off the coast of Kodiak simply because the regulations didn't apply to that, right?

A Yes.

Q But, you would have arrested an American if he were fishing more than three miles off the coast of Alaska, three miles off the coastline of Cook Inlet, wouldn't you?

A We would, because that area was described as under our jurisdiction.

Q And you had arrested American citizens and had tried them and had prosecuted them for years for fishing in described areas in Cook Inlet even though they were fishing more than three miles from shore; isn't that so? As a matter of fact, you testified on your deposition you had never lost a case; isn't [194] that so?

A I don't remember making that positive a statement, but maybe you can find it.

Q Well, let me refresh your memory. Look at page 17 of your deposition. I refer you to line 17, and let me read it to you and you read along with me. "The Cook Inlet fishery is normally prosecuted heavily, well outside the three-mile limit from the standpoint of this beachline, although fishermen would sometimes contend that we had no authority out in the middle of Cook Inlet, but we always contended we did, and I don't believe we ever lost a case on that basis." Isn't that what you testified to?

A That is what I said, yes, which I don't think is what you first asserted that I said.

Q I am sorry. At least now we are straight. I have quoted you exactly.

A Yes.

Q Now, you are aware of the fact, are you not, that the regulations describing Cook Inlet are materially different from the regulations that described other areas of Alaska. You do remember that, sir, do you not?

* * * *

[195] Q Mr. Baltzo, you have in your hands, do you not, a pamphlet that includes the laws and regulations for the protection of commercial fisheries of Alaska?

A. Yes.

Q Now, I have—by a yellow slip there I have marked the regulations for the year 1956. Did you find it there, sir?

MR. PHILLIPS: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MR. PHILLIPS:

Q Let me help you a moment. Yes. You have got them. I might [196] say to you, Mr. Baltzo, the reason I have selected the 1956 regulations is because those, I understand, are exhibits here, and also because I happen to have a copy of them so that I can read along with you.

MR. CHARNEY: Your Honor, I noted that we may be able to refer to this in the future, could we have this book marked for identification?

* * * *

[197] THE COURT: IU? It may be marked IU for identification. It may be marked. You may proceed, Mr. Phillips.

MR. PHILLIPS: Thank you, your Honor.

BY MR. PHILLIPS:

Q Let me ask you, Mr. Baltzo, to pick out some of these definitions of other areas. Before we get to Cook Inlet, let's look at page 33 of the 1956 fishing regulations. Do you find there now the 33 I am referring to? Do you have that, sir, page 33?

A Yes.

Q There you find the definition of the Bristol Bay area, do you not, sir?

A Yes.

Q And it reads, definition, "The Bristol Bay is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point off the coast three statute miles south of Cape Menshikof. Do you see that, sir?

A Yes.

Q And you note the inclusion of the word "territorial" there, do you not, sir?

A Yes.

Q Now, turn to page 36. There you find, do you not, the definition of the Alaska Peninsula area; is that correct, sir?

A Yes.

[198] Q And the definition there is, and I quote, "The Alaska Peninsula area is hereby defined to include all territorial, coastal and tributary waters from a point three statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point to the entrance to"—you are going to have to help me there, sir—

A Kayakliut.

Q —including all adjacent islands." There, again, you will note the inclusion of that word "territorial waters," do you not, sir?

A Yes.

Q And look at page 39. There you have the definition of the Aleutian Islands area, do you not?

A Yes.

Q Read that definition, please, sir.

A "The Aleutian Islands area is hereby defined to all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass."

Q Now, all of these regulations, as you in answers you have testified were authorized by what you called the White Act?

A Yes.

Q And if you will turn to the first page up toward the front, you will find a section, "General authority for the regulations," do you not?

A Yes.

[199] Q And there you have the law set out that is the White Act, is it not, sir? Well, whether it is the White Act or not, whatever it is, notice what that law says that authorizes these regulations. "For the purpose of protecting and conserving the fisheries of the United States and all waters of Alaska, the Secretary of the Interior from time to time may set apart and reserve fishery areas," now, notice this next language, Mr. Baltzo, "in any of the waters of Alaska over which the United States has jurisdiction." Is that correct, sir?

A Yes.

Q Now, you would agree with me as a man who was engaged in enforcing these regulations, that whatever regulations that have described these districts would describe those waters in whatever the district was as waters over which the United States had jurisdiction, would you not, sir?

* * * *

THE WITNESS: Well, I guess I can't very well answer the [200] question because it's over my head, this White Act.

BY MR. PHILLIPS:

Q All right, sir, I don't want to get you over your head. It is a legal question. We have got enough lawyers here, Mr. Baltzo, and I don't want you to be a lawyer, so I withdraw the question, but now I want you to turn

and look at the definition of Cook Inlet, and that is found, as I recall, on page 45. That definition, does it not, reads as follows: "The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area." Now, you notice, do you not, as you understood even back in the 1950's, that Cook Inlet was described differently from these others areas, and the difference is, Mr. Baltzo, that there is no reference in this definition to limiting it to territorial waters.

A Yes.

Q Right?

A Yes.

Q Now, let me ask you to do this, sir, and I don't want to embarrass you. Let me hand you, if I may, or ask the Clerk to do so, a blank sheet of paper and a pencil. Now, if you were going to engage in what you told me was your responsibility to redefine or recommend redefining or recommend changes in the regulations, can you write me a regulation [201] that included more water within the jurisdiction of the United States than the definition right before you, of Cook Inlet?

A Well, I am not sure.

* * * *

[202] Q Can you give me a broader definition of Cook Inlet than the one contained in those 1956 regulations?

A Just sitting here, I can't.

* * * *

[203] Q We were starting, as I recall, Mr. Baltzo, before the recess, with—I call your attention to an instrument which is contained in Exhibit 75. You have that before you, sir?

A Yes.

Q That is a memorandum dated December 16, 1952, is it not, sir?

A The memorandum dated December 16, 1952. Did I say '62, '52?

* * * *

Q I thought you were still looking for it.
A I have it now.
Q You will recall that on deposition, Mr. Cranston asked you about that memorandum, do you not?
A Yes.
Q And you recall, do you not, that while it purports to be written by Mr. Clarence J. Rhode to the director in Washington, [204] you recall that you testified that you believed that you were actually the author of that memorandum?
A Yes, that is what my deposition said.
Q Well, is it true?
A On reading it over subsequent to that time, I believe we collaborated on it because there is, oh, points here that probably Mr. Rhode put in.
Q My point is whether you wrote it, or whether you collaborated in it?
A Collaborated would be a better word.
Q You were there when it was written; is that correct?
A Yes.
Q And I call your attention to this language in that memorandum that you and Mr. Rhode were writing to Washington. I refer to the second paragraph, or third paragraph, where after mentioning Cook Inlet you go ahead and say, "We must control drift gill net salmon operation—salmon operations or lose control completely." You said that, did you not, sir? Third paragraph.
A In the memo of December 16?
Q Yes, sir, right down in the third paragraph. It is the fourth line in the third paragraph, "We must govern drift gill net salmon operations or lose control completely."
A Yes, I read that now.
Q And that was an expression of your policy and Mr. Rhode's [205] policy back there in 1952, was it not, sir?
A Yes, that is correct as stated.
Q And this, again—excuse me, I don't mean to cut you off. Did you want to say something else?

A I say, that statement, that clause, is true. That is the way we felt.
Q Yes, sir. So, coming back now, I am trying and looking back and I know this is a long time ago, Mr. Baltzo, to the reason why you would have boarded or asked permission to board that salmon boat and gotten in touch with Washington. The reason was your policy was that you had to govern drift gill net salmon operations or lose control completely. That was the reason that you would have gotten in touch with Washington, was it not, sir?
A You mean in case we had apprehended a fishing—
Q Fleet.
A —a foreign fishing vessel fishing for salmon?
Q Yes, sir.
A In the waters of Cook Inlet, yes.
Q That would have been the reason?
A And the reason would have been that.
Q Now, I want you to look down to the last paragraph of that memorandum that you and Mr. Rhode collaborated on. I want to read the first sentence to you. "I would like to see some official declarations made on a number of areas, including [206] Bristol Bay and so state in our regulations the jurisdiction as claimed. Canada and other countries have taken a stronger stand." You see that?
A Yes.
Q Now, the reason a moment ago that I was asking you if you could write a broader definition for Cook Inlet was because you were talking about official declarations about Bristol Bay in particular, but the definition in Cook Inlet, by reason of leaving out territorial waters and including all the water between Point Douglas and Gore, was because that was as broad a definition as you could give to Cook Inlet, was it not, sir? That is the reason I was asking you that question a moment ago, because you were advocating stronger declarations about Bristol Bay. You understand why I was asking you to write us another definition to include more waters if you could? You understand that now, sir?

A I believe it was just your way of making a point that that was written as broadly as it could be.

Q Well, I don't know whether it is a good point, but let's go on now. Grandfather rights may be at stake, you said. Now, what do you mean by grandfather rights?

A Well, grandfather rights are those rights that are claimed by virtue of prior practice or occupancy. That is in lieu of any regulation or provision to the contrary. A certain practice may have sprung up and then years later an attempt [207] is made to stop or prohibit this practice, why, the claim is made that they have grandfather rights.

Q That is exactly the way I look at it. That would be a way to establish as what you have heard referred to here as historic bays, isn't it?

A Historical presence or whatever.

Q I want you to come back and I want you to look now to that memorandum that Mr. Charney read out loud. Now, that is in Exhibit 77. That one of April, 1953. I want you to look at what that memorandum says, or the extract there says in the last sentence. Are you with me, Mr. Baltzo? I am looking at April 28, 1953.

A Yes.

Q One of the means by which a historic bay status may be established is to claim jurisdiction at least over the citizens of this country to such waters. That is what it says?

A Yes.

Q And that is exactly what you had been doing, both before and after you got this letter? That is, claim the jurisdiction over the nationals of this country, the United States?

A That is what we had been claiming for fishery regulation purposes.

Q With your wishing to establish some grandfather rights, isn't that true?

A We said one of the means by which a historic bay status may [208] be established is to claim jurisdiction.

Q Yes, sir, and that would be this historical business that gives rise to grandfather rights, that in turn give rise to historic bays. It is just that simple.

A Of course, this is signed by the director to us. This is his statement, not ours.

Q Now, you say you were greatly—you received this memorandum here with great relief, that was your words this morning; is that correct?

A Yes.

Q Now, you weren't greatly relieved to learn, I wouldn't think, that you'd let foreigners fish in these waters when if the American citizen fished there you would haul him in and arrest him? That didn't give you a great deal of relief, did it?

A Our relief was because we finally had a statement on the part of the national director as to what we should do, and also it confirmed the policy we had been following up to that time.

Q Yes, sir.

A It didn't pull the rug out from under us.

Q You didn't find any relief, let me put it to you this way, or maybe you did, in a policy that required you to arrest American citizens at the same place where you would let foreigners deplete the salmon fisheries of Cook Inlet. You wouldn't have found any satisfaction in that, would you?

[209] A Well, that is a hypothetical case. It never occurred. That wasn't the reason we felt any relief, and I don't believe we gave much thought to that part.

Q The relief you got—you advocating that some official declarations be made and that grandfather rights were at stake, the way you would have been relieved, it seems to me, and if I am wrong, you tell me, was to have taken these steps so on American nationals so as to require a historic bay status for Cook Inlet. That would have been to your liking, would it not, sir?

A I am not sure I understood your question, really. I'm sorry.

Q I am not sure I understood what you meant this morning when you said you received this memorandum

from Mr. Day with a great deal of relief. You say it clarified policy?

A Uh-huh.

Q And I understood that you were relieved to have it clarified, but you shouldn't—you couldn't have been relieved to know that hereinafter you are going to have to arrest Americans and let foreigners go free, could you?

A We had no problem at that time with foreigners threatening salmon fisheries. That is why we wouldn't have felt anything in regard to it.

Q All right, and this is my point. The only people you could enforce the fishing regulations on on salmon were American citizens, because they were the only people fishing in Cook [210] Inlet; isn't that true?

A For salmon, yes.

* * * *

BY MR. PHILLIPS:

Q Mr. Baltzo, turning to page 63 and 64 of your deposition—

A You say 64?

Q Sixty-three, sir.

A Sixty three.

Q Look at line 12. Let me read it to you to get it in context. "What type of data, memorandum, consultation or otherwise did you conclude that a six-mile limit applied at the time you were in office rather than, say, for instance, a 10-mile limit for closing bays?" Read out your answer.

A "Because—well, because the three-mile limit applied, and doubling it comes to six instead of 10."

* * * *

[211] Q The question was, "Were you ever made aware of, or did you ever consider the possibility that perhaps a 10-mile limit might apply in certain bays, also?" Read your answer.

A "I can't recall there was any such concept considered, no."

Q All right, now, go ahead and read it all. In other words, the question was, "In other words, no one in your office, or no one with whom you conferred in the Juneau office, was aware of the possibility that there might have existed a 10-mile limit for closing base in the 1950's in the United States?" Read your answer, sir.

A "I sure don't remember anything like that."

Q Now, turn to Exhibit 75 again, sir. Look at the March 31, 1952, memorandum. Now, in your deposition —before we get to that, exactly, turn to page 37 of your deposition.

[212] A I have it.

Q It's 36, the page just before that.

A Page 36?

Q Yes. Look at the last question.

* * * *

Q The last line, 20, you see it, Mr. Baltzo?

A Yes.

Q All right, getting to the one of March 31, 1952, that is referring to this memorandum of March 31, 1952, is it not?

A Yes.

Q "Did Mr. Rhode discuss this memorandum with you at all? Were you made aware of any of the contents of this memorandum?" And your answer was, "Well, yes, I was aware of the overall situation and I am sure that in one way or another I participated in it, but I didn't write this." That is indicating, so the deposition says.

A Yes.

Q You were indicating to the March 31—

A Yes, I said I did not write this.

Q Now, look at that March 31 memorandum a little more closely, this very memorandum that you say you participated in. Doesn't it refer to a 10-mile limitation? What I refer to, Mr. Baltzo, [213] is the third paragraph of that March 31 memo, the third sentence, "The maximum," or fifth sentence, "The maximum distance, shore to shore, for inclusion of bays," well let's go back—

as you are aware, the inlet is several times 10 miles wide, the maximum distance shore to shore, inclusion of bays, as territorial waters?

A Yes.

Q Now, how could you tell us on deposition, or why would you tell us on deposition, that you had never heard of a 10-mile line when you participated, so you say, in writing a memorandum that referred to the 10-mile line?

A Because at the time of the deposition I couldn't recall what the 10—what 10—what concept this 10-mile thing was.

• • • •

[214] Q I want to refer you again to this memorandum of December 16 where, you will recall, that you were in favor, you and Mr. Rhode, who collaborated with you, in favor of some rather strong declarations of policy.

A Yes.

Q You pointed out there that Canada had taken some strong positions, right?

A That was pointed out in here, and probably was based somewhat or based entirely on Mr. Rhode's knowledge. I am not sure at [215] all what he meant by that.

Q Now, if you were going to make strong representations, there would be a number of ways to do it, would there not?

A Oh, I suppose.

Q Well, let us suppose that Canada had asked the United States to tell them where they drew the line that separated the high seas from the internal waters of the United States. If you wanted to make a strong representation, one way to do it would be to respond to that request by Canada, would it not?

A Yes.

Q Now, and one way to show the exclusivity of United States waters would be to send a line—send a map showing a line; is that not correct, sir?

• • • •

[216] Q Now, did you know that after you left, or about the latter part of your stay, that the Canadian

Government asked our government for a chart showing a line that we would draw?

MR. CHARNEY: Objection; hearsay.

THE COURT: I believe you covered this on direct, counsel.

MR. CHARNEY: The Clay-Scudder Line, your Honor.

THE COURT: The Gharett-Scudder Line.

MR. CHARNEY: I beg your pardon, the Gharett-Scudder Line.

THE COURT: I believe the witness testified earlier in regard to the Gharett-Scudder line.

MR. CHARNEY: Not to what the counsel for the Defendant is asking.

MR. PHILLIPS: Let me rephrase the question.

THE COURT: I will consider the question withdrawn.

[217] BY MR. PHILLIPS:

Q Don't you know that the Gharett-Scudder Line was drawn on a chart and that that chart was furnished to the Canadian Government in respond to a request made by the Canadian Government?

• • • •

THE WITNESS: I know today based on something I have read that Canada was given a set, but at the time of the deposition, and at the time I worked in Juneau, I did not know. I had no way of knowing why the Gharett-Scudder Line was requested or what its purpose was.

MR. PHILLIPS: I see.

THE COURT: All right, the answer may stand.

MR. PHILLIPS: I believe that is all, your Honor. Thank you.

THE COURT: Redirect examination?

[218] REDIRECT EXAMINATION

BY MR. CHARNEY:

Q Mr. Baltzo, do you know whether or not your enforcement agents, or you, acting as an enforcement agent,

ever went on board private vessels not for the purpose of law enforcement?

A Oh, yes.

* * * *

Q Did you ever act as an enforcement agent in the field?

A Well, yes, I have acted as an enforcement agent quite a few times.

Q Did you ever go on board private vessels while you were with such an agent?

[219] A Oh, yes, frequently.

* * * *

[236] TAKAMI ICHIMURA

being first duly sworn upon oath, testified as follows:

* * * *

[238] DIRECT EXAMINATION

BY MR. BRADLEY:

* * * *

[239] Q Mr. Ichimura, will you please describe your past education?

A In 1955, graduated from the Tokyo University, area of specialty, fisheries. Immediately enrolled myself in school of the same university pursuing the same subject matter. In two years, conferred master's degree on fisheries. Immediately afterward, enrolled myself doctorate program. Spent three years, completed all the requirements and presently preparing a thesis for presentation.

Q Would you please describe your past employment?

* * * *

THE WITNESS: In 1959 as a temporary research employee of the Foreign Office of the Japanese Government, served International North Pacific Fisheries Commission, research committee, biological studies of cultures. In 1960, assumed a position of the director of the research institute, Japanese Research Institute of Shrimp Cultures. In September of the same year, the said research institute was reorganized into a profit-making corporation of which I became the director. Terminated this employment in February 1962. Became employed by the Eastern Pacific Fisheries Company, [240] Limited, in March 1962, the same year. From March on, began participating in the experimental test operations of the Kodiak herring. During the summer of 1963, engaged in the processing of herring roe and salmon in Alaska, working under contract for Western Alaska Enterprises, but remained in the employ of the Eastern Pacific Fisheries.

In 1964, transferred to the culture department within the Eastern Pacific Fisheries. In 1968, this culture department activity became independent of the Eastern Pacific and the new corporation thus formed became to be named South Sea Fisheries Company, Limited, of which I became the director.

In 1969, the South Sea Fisheries Company, Limited, absorbed another corporation called Japan Shrimp Cultures, which was my first independent organization, and thus new corporation after absorption came to be called Shrimp and Yellow Fin Cultures Company, Limited, of which I became the director, and this employment remains until the present day.

BY MR. BRADLEY:

Q. Mr. Ichimura, you testified that in 1962 you participated in an experimental herring fishery off Kodiak Island. At that time, did you come to Kodiak?

A Yes, I did.

Q How did you come to Kodiak?

A I came on board the Banshu Maru 31, which was a mother boat, [241] and there was a fleet of other vessels surrounding this mother boat. As the fleet came to Kodiak, I came to the waters near Kodiak.

Q Would you describe the purpose of the trip to Kodiak?

A The purpose was to come to the waters near Kodiak Island and catch the herring; should I say spawn herrings, and process kosnoko which is herring roe cavear.

Q How many vessels came with the Banshu Maru 31?

A In addition to the mother boat Banshu Maru 31, we had five other boats.

Q Who employed these vessels?

A Eastern Pacific Fisheries Company.

Q What was the headquarters location of the Eastern Pacific Fisheries Company?

A Inside building located at 1-1 Marunouchi Chiyodku, Tokyo, Japan.

Q Would you please describe the composition of the fleet that accompanied the Banshu Maru 31?

A There were two sets of herring fishing boats consisting of one purse sein boat and one tender. Therefore, there were two purse seiners and two tenders. Assigned to these was another boat which you might call a bonfire boat, therefore comprising together five boats in addition to the mother boat.

Q Mr. Ichimura, will you please describe the functions of the vessels you have described?

[242] A The processing, of course, of the boat which engaged in direct fishing as soon as fish schools are found. Therefore, they will make certain that the condition of the bottom of the sea are not interfering with the fishing boat, and also checking on weather conditions. They will set the net and catch the herring. The tender boats assist the catcher boats or the purse seiners in arranging the net to catch the fish, and after capture, tender boats perform the function of transporting the catch from the purse seiners to the mother-boat for processing. The bonfire boat has that particular function of making fire on board for the purpose of luring the herring schools if the concentration of fish are not enough to justify fishing efforts, particularly in the dark hours of the night. The bonfire boat plays the role of collecting and keeping the fish school where they can be caught.

Q Mr. Ichimura, how large is the Banshu Maru 31?

A Approximately 1770 tons.

Q How large is the crew?

A Approximately 125.

Q How large were the purse sein boats?

A One was 180 tons. The other was 150.

Q How large were the crews of these vessels?

A Twenty-five for the larger one, and 22 for the smaller one.

Q Mr. Ichimura, do you remember the sizes of the tender vessels?

[243] A One was 100 ton capacity. The other was 70.

Q Do you remember the size of the bonfire boat?

A About 30 tons.

Q Would you describe the methods employed by these vessels to catch fish?

A First of all, five boats other than the mother boat were equipped with a fish school detection equipment by the use of which they will continue from the time they arrive on the fishing ground, continue searching for fish schools. In our operation, to find the fish schools comes first. And then, once you detect a school of herring, since the method of catching fish is purse seine, it becomes important that you ascertain the bottom conditions are right and also weather conditions are favorable. Concerning these points, the two purse seiners and two tenders encircle the fishing—fish school. Thus, purse seiners circle the school with the purse seine nets, you naturally tighten the purse and bring the fish out into the hold, and tender boats from that point carry the catch back to the motherboat. Such was the method of operation.

Q Mr. Ichimura, can you tell me what a fish group is?

A It means the school of herring fish.

Q Is there any distinction between fish group and fish school?

A You see, the way English words are used, in Japan if you say "fish school," it sounds as if they're enrolled in elementary [244] school, so they use the word "group" instead of school in Japan.

Q What kind of detection gear was used by these vessels when they were searching for fish groups?

A The equipment was based on the principle of sonar detection.

Q Was this equipment used while these vessels were in transit?

A Yes. Of course, they were not used until the fleet arrived in the fishing ground area near Kodiak Island, but from that point on at all times during navigation all of the five boats were using the detection equipment.

Q According to the fishing methods that you have just described, was it necessary while in the course of these operations to utilize the entire fleet?

A Yes, they were necessary.

Q Normally, would the purse seine boats set their nets before they detected schools of fish?

A Not under normal conditions.

Q Under what conditions would they set their nets before—excuse me—before they detected a fish group?

A Well, around Kodiak Island, in Shelikof Strait when we arrived—shortly after arrival, we were not finding any herring schools, but dropped the nets in the water a couple of times for one to check the mechanism of the purse seine, and also practice methods of handling the net.

Q What officer was responsible for the navigation of the [245] Banshu Maru from Japan to the Kodiak group?

A Captain Mongo Hanasaki was responsible.

Q Did the captain make all the navigational decisions during the voyage to the fishing grounds?

A Of course he did.

Q Did his responsibility for navigational decisions change at any time?

A Yes, it did.

Q On this trip? When did it change?

A From after the fleet's arrival on the fishing ground.

Q How did it change?

A First of all, the purpose of the sending of the fleet is—the primary purpose is to implement the herring operation plan and therefore after arrival on the fishing

ground, not only the movement of the vessels, but also the planning thereof, and also those other matters directly relating to the movement of the vessels comes under the supervision of a group of five individuals who are charged with the responsibility of conducting the operations plan. Of course, even if the group takes over the operating responsibilities and movements related to it, the captain of the vessel continued to exercise—maintained or exercised authority in two areas. One. the safety of navigation, the other—

Q What is the operations group?

A Policy work. These are five individuals sent by the company [246] to execute the project.

Q Who were the members of that group?

A The group was headed by Mr. Yamaki, and fishing efforts were supervised by Mr. Kominato, processes by Mr. Toyoda, and general affairs by Mr. Kominato, and I, myself, took the responsibility of planning.

Q Can you describe in some more detail the functions of this operation?

A First of all, the manager of the group is in charge of the overall supervision of the function of these men. And then Mr. Kominato, who is in charge of fishing efforts, he will determine such matters as the density of a given school of fish, the size of it, and also a suggested method of catching the fish. He being the expert on these subjects, he naturally makes studies and recommendations to the group which will be discussed and reviewed within the group for final decision by the manager.

Mr. Toyoda, in charge of processing, of course, is in charge of the production, all phases of production, and his primary responsibility is to see to it that the quality of the product is the best attainable.

Mr. Kominato, in charge of general affairs, his role is to take care of the payroll of the crew and keep elementry check on the various provisions and other general affairs of the conduct of the internal affairs on board the boats.

[247] If you remember, myself in charge of planning, my responsibility was to detect a migration route of

moving herring schools, and after catching the fish determine biologically how mature the fish might be. All these problems, of course, discussed back and forth amongst members of the group, and after providing the best available biological knowledge to this group, I might also present recommendations as to how the boat should be moved from point to point in order to follow the migrating fish schools.

Q Did Mr. Ichimura want to say something?

A That is all.

Q Once the fleet had arrived in an area, did it restrict its fishing to the area in which it had originally arrived at?

A No, it did not.

Q On what basis was the decision to change areas made?

A After going around the island of Kodiak once in which time no fish schools were found, we came to the conclusion that the main herring schools were still migrating from outside into the spawning ground, and realized the necessity of continuing our cruise around the island in order to study the pattern of migration.

Q Did your job, Mr. Ichimura, your function on the Banshu Maru, require you to be familiar with the log of the Banshu Maru?

A Yes.

Q Why did you need to be familiar with that log?

[248] A You see, first of all, we have to look for the fish, the schools of fish. In our efforts to detect the fish schools, it naturally follows that we have to keep ourselves abreast on the movement of the vessel itself and methods and direction of future movements. These are quite important as a basis of the discussion for the group in order to make critical operating decisions. And in order to determine the present and future points of the location of the vessels, we frequently consulted the log. And of course, we were also obliged to check the log from time to time to make sure that none of the boats came close to violating the three-mile limit at all during the operating period.

Q Where on the vessel is this log kept?

A In the chart room on the bridge of the motherboat.

Q Did you have access to that room?

A Of course, I did.

Q What reasons would you go into that room for?

A The primary reason is the fact that the conferences of this operations group was frequently held in this chart room.

Q How often would these conferences be held?

A Well, sometimes there might be as many as three to four meetings a day. Other days, there might only be one meeting.

Q How often would you check the log of the Banshu?

A You see, whenever there is a change of course, this is preceded by a conference amongst the members of the operations group [249] for good rasons that you understand, and therefore, at such times we all check the log to make sure that we are doing it correctly.

Q So, you saw it at least every time the boat changed direction?

A Yes, most of the time.

Q Why did the Banshu Maru keep the log?

A First of all, it is required by the law of navigation of Japan that the captain keeps the vessel—keeps the log. It is a legal requirement. And secondly, the employer organization requires a certain record keeping during the navigation period, and for these two reasons, the log was kept aboard the motherboat.

Q What were the legal requirements imposed by Japan on the vessels to keep a log?

A As to the particular specifics of the requirement, I don't have knowledge.

Q What was the nature of the entries that were made in the log?

A The information contained in the log consists of the following, such as position of the vessel at noon, 1200 hours, the various conditions of the weather, time of the change of the position, whether or not the catchers are detecting the fish schools, the consumption and entries of oil, water and other supplies.

Q Were these entries made in the log of the Banshu Maru during [250] the Kodiak operation?

A Yes, they were.

Q Who were these entries made by?

A They were entered by the chief officers of the vessel.

Q Generally, can you describe at what intervals they were made?

A It is impossible to say how often, because it depends on the conditions and the nature, such as type of weather, and also change of the course of the vessel which might occur very often one day and not at all another day.

Q What language was the log of the Banshu Maru kept?

A English language.

Q Mr. Ichimura, can you speak English?

A Only a little.

Q Can you understand spoken English?

A If you don't complicate what you are saying.

Q Can you read English?

A Yes.

Q Can you write English?

A Simple sentences, yes.

MR. BRADLEY: At this time, your Honor, I would ask the Clerk to hand to Mr. Ichimura Plaintiff's Exhibit Number 104.

BY MR. BRADLEY:

Q Mr. Ichimura, will you please review that document? Do you recognize that document?

[251] A Yes, I do.

Q Would you tell the Court what it is?

A It is a copy of the log book of the Banshu Maru 31 of that time period the operation—herring operation continued at that time.

MR. BRADLEY: Your Honor, at this time, the Plaintiff would like to re-offer Plaintiff's Exhibit Number 104 as the authentic copy of the Banshu Maru.

THE COURT: Is there any objection?

MR. CRANSTON: There is no objection, your Honor.

THE COURT: It may then be marked and received into evidence as 104.

(Plaintiff's Exhibit No. 104 received in evidence.)

BY MR. BRADLEY:

Q Mr. Ichimura, during what period of time does this log cover? What period of time does it cover?

A From the time the fleet left the Japanese port in the latter half of March 1962 through the month of June until the time of our arrival back in Japan.

Q Mr. Ichimura, what was the operational plan of the vessel Banshu Maru and the fleet when it reached the Kodiak fishing ground?

A First of all, we had had previous biological knowledge that there was a principle spawning ground in the Shelikof Strait, [252] particularly in the waters adjacent to Uyak and Uganik. Therefore, our preliminary plan called for placing the center of our operation in that vicinity. However, we had no biological knowledge whatsoever of the general pattern of migration of the schools. Therefore, we also had in mind a plan to move around the island of Kodiak in order to determine scientifically the condition of migration of different schools of herring, and at the same time, in so doing discover mature spawning herring schools, capture them and process them. Such was the purpose of the plan at the time of arrival.

Q Did you search for fish in the area you originally arrived?

A Of course, we did.

Q Did you find fish.

A No, we could not.

Q What did you do?

A Well, we went around the island and moving northward we passed waters south of the Barren Islands and came back to the Shelikof Strait approximately where we had started, and I remember in the beginning

of the month of April, finally we for the first time found a school of herring. It was near Uyak.

Q After leaving Shelikof Strait the first time and passing south of Kodiak Island, did you fish on the Pacific side of Kodiak Island?

[253] A Yes, we looked for fish.

Q Did you find fish?

A No.

Q Did you set your nets there?

A No, we did not.

Q Continuing on the route you described, did you fish north of Kodiak Island?

A We looked for fish, but did not find them; therefore, did not use the fishing gear.

Q You testified that you finally found fish when you reached the Shelikof Strait area; is that correct?

A Yes, we did find—we did find them and we caught them.

Q What did you do with these fish?

A Well, we conducted a series of biological tests starting from the measurement of the body of the fish, and particularly as it was important for the purpose of the operations, the rate of sex maturity, having to do with the maturity of the eggs, but most of the fifteen ton of fish were found in the stage of prematurity. They were immature and therefore, as a result of these tests, we arrived at the conclusion that the season was as yet too early and the main part of immigration was still to come.

Q What did you do as a result of these findings?

THE INTERPRETER: Excuse me. Since you spoke, I missed him. I had asked him to repeat.

[254] BY MR. BRADLEY:

Q What did you do as a result of these findings, Mr. Ichimura?

A As I said, we came to the conclusion that the main body of the mature incoming schools are not yet around, and therefore from that conclusion we came to the decision of going once again around the island of Kodiak in search of them?

Q Did you search for fish on this route?

THE INTERPRETER: Which—on this route, you mean the second route?

MR. BRADLEY: The second route.

THE WITNESS: Of course, as I said, we were searching whenever in navigation.

BY MR. BRADLEY:

Q Did you find fish?

A No.

Q Then what did you do?

A Well, we only made one further trip which was unsuccessful. This time in going around the island again we decided to go north of Barren Islands because the last time when we made that turn south of the islands there was no finding reported. We had the final view in mind of coming back to Shelikof Strait.

Q At this time, you testified that you went north of the Barren Islands?

A Yes, if north is not appropriate, above the islands.

[255] MR. BRADLEY: At this time, your Honor, I would like to ask permission for the witness, the interpreter and myself, to approach the easel to which is attached Plaintiff Hodgson's Deposition Exhibit Number 7.

* * * *

Q Mr. Ichimura, have you ever seen this map before?

A Yes, I have.

Q When have you seen it?

A Yesterday afternoon in the basement of this building.

Q Who showed you the map?

A The person standing in front of me.

[256] Q Do the lines which are drawn on this map and which are lettered A and B have any significance to you?

A I think it is the reproduction of the course taken by the fleet headed by the Banshu Maru 31 around the 6th of April 1962.

Q And to the best of your memory, these lines represent the general course of the Banshu Maru?

A Yes, it must be the course of the fleet.

Q Were you searching for fish groups on this day?

A Yes. As I said, boats were instructed to do so while in cruise.

Q If groups of fish had been located on this day, would you have set your nets to capture them?

A Yes, most likely, they would have.

Q While on this route which you have described on this map as represented by Lines A and B, was the Banshu Maru interferred with by any authority?

A No, not at all.

Q Did you take this route north of the Barren Islands that you have described in order to enter a port?

A (Nodded to the interpreter.)

Q A port?

A A port, all right. No.

Q Did you enter a port north of the Barren Islands?

A No.

[257] Q Did you take this route north of the Barren Islands described on this chart in order to find shelter from the weather?

A No, it wasn't.

Q Did you enter on this route north of the Barren Islands to find shelter to repair damage to your vessels?

A No, there wasn't.

Q Mr. Ichimura, as you took this route which you have described and which is delineated on this map and you came here between Cape Elizabeth and the Barren Islands, did you think you were entering the territorial waters of the United States?

* * * *

[258] THE WITNESS: No, I had no knowledge of that.

* * * *

[260] MR. BRADLEY: Before Mr. Cranston begins his cross examination, there is a matter about the identification and admission of the map that I used in the direct examination of Mr. Ichimura. It is an exhibit to Plaintiff Hodgson's deposition. It is Exhibit Number 7. We wonder what procedure we should use to have it

identified here so it won't be confused with the Hodgson deposition as an exhibit to it as well as this.

THE COURT: Perhaps the record could reflect that the map referred to by the witness is that taken from the Hodgson deposition.

MR. BRADLEY: Dr. Hodgson, the geographer of the [261] Department of State.

MR. PHILLIPS: Is it presently marked? Why couldn't we use the same number?

MR. BRADLEY: No, it is not. It is subject to all of the qualifications and restrictions on depositions exhibits that you placed yesterday.

THE COURT: Well, it could be offered as a regular exhibit. The only trouble with that is to separate it from the deposition or, of course, it could receive both. I don't know as it would be particularly confusing. Why don't we give it the next number and then it may be returned to the deposition.

MR. BRADLEY: Thank you. I believe it is 116.

THE COURT: Is there any objection to receiving it as illustrative of this witness's testimony?

MR. CRANSTON: There is no objection to that, your Honor.

THE COURT: You mark it next in order, then, Mr. Clerk, and directly into evidence, and then it may be—after the witness has completed his testimony, it may be returned to the deposition.

THE CLERK: One hundred sixteen, your Honor.

THE COURT: One hundred sixteen.

(Plaintiff's Exhibit No. 116 received into evidence.)

* * * *

[262] CROSS EXAMINATION

BY MR. CRANSTON:

Q Mr. Ichimura, you have told us about the voyage you commenced on or about the 6th day of April around the Barren Islands, which is reflected on the exhibit. I would like to pursue that a little bit further with you.

Mr. Ichimura, after you left the area which on this chart is this area here (indicating), could you tell us where you went?

A We went to the waters close to Ban Bay.

Q And that, Mr. Ichimura, I believe is off the west coast of Kodiak Island; is that correct?

* * * *

[264] THE WITNESS: If you mean the west coast means the side [265] of the Shelikof Strait of the Kodiak Island, yes.

MR. CRANSTON: Mr. Clerk, does Mr. Ichimura have before him Exhibit 104? If not, I wonder if it could be handed to him?

THE CLERK: Yes, Mr. Cranston.

* * * *

Q Mr. Ichimura, I would refer you to page 41 of the exhibit to the entry in the last portion between the two heavy lines commencing 2110, and I would ask you to have—I would ask [266] that you read that through the use of the interpreter if necessary.

A "2110, got alongside Teal, T-e-a-l, U.S.A.F.D.O., fishing, inspect boat and came on board, fishery department officer."

* * * *

[267] MR. CRANSTON: At this point, I would read into the record the entries which have been explained to Mr. Ichimura.

"2110, got alongside Teal, U.S.A.F.D.O., fishing inspection boat, and came on board, fishery department officer."

"2300, cast off Teal. Captain went together by reason of breaching territorial waters. Otori Maru, Dairyo Maru Number 61, were suspected of breaching territorial waters. Soon arrested."

BY MR. CRANSTON:

Q I would ask Mr. Ichimura if he recalls these events.

A Yes, I do recall.

Q Is it true that the captain of the Banshu Maru Number 31 was arrested by the officials of the Alaska Department of Fish and Game as indicated in the log?

MR. BRADLEY: Excuse me, your Honor. At this time we have an objection. That calls for a legal conclusion which [268] the witness is not qualified to give.

THE COURT: No, he may answer if he knows. He may not speculate, so if he knows the answer, he may answer, but he must not guess at it.

THE WITNESS: Yes, what you said is correct.

* * * *

THE INTERPRETER: Mr. Ichimura's amplification, in answering to your question, after saying, "Yes, what you said is correct," Mr. Ichimura further states that he has no knowledge or recollection of whether it was an official from Alaska State Fish and Game or possibly United States Coast Guard or some other agency, because he recollects at the time of the boarding of the officer the request by the crew for presentation of a warrant was not heard, and as a result, no warrant was seen by anybody, thus making it difficult for Mr. Ichimura to recognize who it was, but it was most likely that it must have been some kind of government officer.

THE COURT: All right, go ahead.

[269] BY MR. CRANSTON:

Q Then, I can take it, Mr. Ichimura, that the captain of your vessel was taken into custody by someone and had to leave the vessel?

A It is a fact.

Q Do you know, Mr. Ichimura, if any other persons from either the Banshu Maru 31 or any of the other five vessels in your fishing fleet were taken into custody by anyone at that time?

A Yes, there were others.

Q How many?

A The captain and crew of all three, Otori Maru, and also captain and crew of Dairyo Maru.

Q Now, Mr. Ichimura, I would refer you to page 44 of the Exhibit 104, and I will read into the record the

entry appearing after the figure 1950, and ask the translator to read it to Mr. Ichimura.

"Got alongside Teal (U. S. Fishery Department and Game Inspection Boat). 1000, Cast off Teal. Captain been arrested. Again owing to take territorial waters into court, Alaska State."

Could you look that over, Mr. Ichimura, please? Mr. Ichimura, are you familiar with that incident?

A Yes, I am.

Q And was the captain referred to in the log entry once again Captain Mongo Hanasaki?

[270] A Yes, it is.

Q After the arrests, or after the incident which we have just referred to, Mr. Ichimura, was an agreement entered into between the Eastern Pacific Fisheries Company and the State of Alaska?

A Yes, I am aware of it.

Q Mr. Ichimura, one further question. Was the agreement of which you are aware reduced to writing?

A Yes, it has been.

MR. CRANSTON: I would like to hand the Clerk a copy of an agreement dated at Kodiak, Alaska, April 19, 1962, executed by the State of Alaska and the Eastern Pacific Fisheries Company, that agreement being a record in Criminal 62-141, 62-142, 62-1A, in the Superior Court for the State of Alaska, Third Judicial District, entitled, "State of Alaska, Plaintiff, versus Mongo Hanasaki, Mine Sotashi and Higashima Tadao," and I would like that—I will hand a copy to counsel. I would like that marked next in order.

THE COURT: It may be given the next in order for the State for identification.

THE CLERK: I-V, your Honor.

(Defendant's Exhibit I-V marked for identification.)

THE COURT: It may be handed to the witness.

[271] BY MR. CRANSTON:

Q Mr. Ichimura, you have been handed what has been marked for identification as State of Alaska Exhibit I-V. I would ask you to turn to the last page of that

document, and I would ask you if on that document you recognize the signature of Captain Mongo Hanasaki?

A Yes, there is such a signature, and I can personally recognize it.

Q And do you recognize personally the signatures of the other Japanese individuals on that document under the heading, "Approved and consented to"?

A Yes.

MR. CRANSTON: At this time, your Honor, I would move the admission into evidence of State's Exhibit I-V, which is a certified copy of a document by A. M. Vokachek, Clerk of the Superior Court, Third Judicial District of the State of Alaska, and which I described earlier.

THE COURT: Is there any objection?

MR. BRADLEY: No objection, your Honor.

THE COURT: It may then be marked.

(Defendant's Exhibit I-V received in evidence.)

* * * *

[272] Q Mr. Ichimura, I notice the agreement which has now been admitted as Exhibit I-V was signed on the 19th day of April 1962. Will you tell me what the fishing fleet of which you were involved did after the signing of the agreement?

A After the date of signing of this agreement, as a result of the terms and conditions agreed upon, the captains and crews of both the Otori Maru and Dairyo Maru, together with the captain of the Banshu Maru 31 were released from detention and therefore the three immediately proceeded to reorganize group operations and went southward through Shelikof Strait, going around the southern end of the island, again sailed northward on the Pacific Side of the island.

Q And did the group then engage in further fishing activity thereafter?

A Yes.

Q Where was that?

[273] A It would be much easier if I were next to the chart to point to the course, but short of that, let me say that the fleet went further north and turned east-

ward, the general direction of Juneau, and kept conducting detection and other surveys in the waters within the limits prescribed on the permit issued by the fisheries agent of the Japanese Government.

Q I take it, then, the fleet did not again enter the area of Shelikof Strait or Cook Inlet?

A No, you are right.

Q Mr. Ichimura, you were then aware, were you not, that the Japanese Government was consulted by your company about this agreement, Exhibit I-V?

A Of course, yes, but let me describe how we did it. It was evident at the time that there would be a very substantial financial loss incurred already as a result of the incident, and therefore, in proper discharge of our responsibility, we tried and did contact our government through our lawyers in Tokyo, checking on the important points of the problems we were faced with.

Q Mr. Ichimura, you also knew, did you not, at that time, that the agreement could not be signed without the consent of your government?

A I was—I had no knowledge of that.

Q Did you not know, however, that if there had been opposition from your government, the agreement would not have been signed?

[274] THE INTERPRETER: Excuse me. Opposition to the effect that they should not sign it, is that what you are saying?

BY MR. CRANSTON:

Q Did you not know, however, that in the event of opposition from your government, the agreement would not have been signed?

• • • •

THE WITNESS: Of course, we were waiting patiently for the instructions to come through from our Tokyo lawyers as to what to do about it. However, the actual condition that prevailed at that time, you might describe it as a chaotic situation, and there were conflicting news and information. Therefore, in the final analysis the decision to sign it was arrived at through a joint conference amongst ourselves.

BY MR. CRANSTON:

Q However, in rephrasing my question, Mr. Ichimura, would your company have signed this agreement, and would your group have agreed to the signature of this agreement if there would have been opposition from the Japanese Government?

• • • •

[275] THE WITNESS: I cannot answer that question.

BY MR. CRANSTON:

Q Mr. Ichimura, at the time when we spoke about this matter approximately two nights ago, did you not tell me in response to a question, the question being—

MR. CRANSTON: Do you want to interpret at that point?

BY MR. CRANSTON:

Q Would your company have signed the agreement if your government had opposed the signing of the agreement, that being my question. Did you not answer, "The agreement would not have been signed in the event of opposition from my government"?

A Yes, I did, but then I was expressing my personal opinion, and of course, in the final analysis and the final decision that was made through our lawyers in any event, and based on their decision, I would have discussed the matter and our operations group head would have made the final nominal decision as to what to do.

Q I take it, then, no opposition—that you were aware of no [276] opposition from your government concerning the signing of this agreement?

A I have no personal knowledge whether the Japanese Government made opposition to the act; however, I was aware at the time of it of a directive from the headquarters of my company telling us not to sign it.

• • • •

Q Let me ask this, Mr. Ichimura. Has the Eastern Pacific Fisheries Company since the time of the signing

of this agreement conducted fishing operations in Cook Inlet or Shelikof Strait?

A No.

Q Do you know of any other Japanese company whose fishing vessels have engaged in fishing in Cook Inlet or Shelikof Strait since the date of the signing of this agreement?

• • • •

[277] THE INTERPRETER: Yes, he did. His answer was, "I don't know."

BY MR. CRANSTON:

Q Mr. Ichimura, going to your testimony which you referred to this exhibit which has been marked as Exhibit 116 in this case, can you give me an approximation of the amount of time which elapsed between the time you were at what has been indicated as Point A or Point B and until you reached the location which is indicated as 1200 hours, 4/6/62?

A You see, as I remember, the 1200 hour position record on the preceding day is somewhere below the middle of the Kodiak Island on the Pacific side. Therefore, judging from that, the number of hours spent in between these two points you mentioned, namely from A and B to that day's 1200 hour point, it must have been, I think, something like 10 to 12 or perhaps more like 12—10 hours.

Q Now, Mr. Ichimura, during that period of time which is represented by the lines drawn on Exhibit 116, did any of the vessels involved have any fishing nets out?

A No.

Q Or were any other type of fishing gear such as lines or purse seines being used or out of the boats?

A You see, I was, as you know, on the motorboat, not within visual distance from the catchers most of the time. Therefore, [278] when I say that they were not using the gear in the water, my statement is based on the assumption that they should not have been using the gear in the water because they normally do not drop the gear in the water unless fish schools have been found through the detector, and I also happen to know that in

this time period there was no reporting by any one of the catchers of finding of any fish schools.

Q So, then, the reasonable conclusion is, is it not, Mr. Ichimura, that there were no nets, fishing gear, lines or other type of fishing gear in the water?

A Yes, it is quite reasonable.

• • • •

Q A few more questions, Mr. Ichimura. First, did you observe the presence of any vessels from the Alaska Department of Fish and Game during the period of time that you were cruising between Points A, B, and the 1200 hour location on Exhibit 116?

A No sighting of Fish and Game boats around Barren Islands, nor in the subsequent cruise time until 1200 hours point. However, I have recollection of sighting a vessel before we came into the waters shown on that chart, and the position was somewhere northeast of Kodiak Island below Barren Island, [279] facing the Pacific Ocean we sighted a boat which might have been an Alaska State Fish and Game vessel, or can equally have been United States Coast Guard boat. We weren't certain, but both our boat and this vessel exchanged signals by the use of flags, mutually wishing safety on the sea.

Q And this was, Mr. Ichimura, prior to the time you arrived at the Point A-B on that exhibit; is that correct?

A Yes, it is.

Q Mr. Ichimura, have you ever had any training in the subject known as international law of the sea?

A No.

Q And have you ever, apart from any training you have had, ever studied the legal regime of historic bays?

A No.

Q I take it, then, your testimony in response to Mr. Bradley's question to which I objected while you were standing up here at Exhibit 116, it was not based on any teaching or opinions on your part relative to the legal status of the waters in which you may have been?

A Of course, I was—I was not with any such trained knowledge at the time of the cruise. However, as I have

told you before, throughout the time we spent together on the ground we were in continuous conferences amongst our group including the captain of the boat, and since captains never make any mention of such legal problems, regimes, restrictions, I was [280] of the impression that—no, I was unable to obtain any expert knowledge on the subject.

MR. CRANSTON: I have no further questions, Mr. Ichimura.

THE COURT: Any redirect examination, Mr. Bradley.

MR. BRADLEY: Yes, sir. May I have a second?

THE COURT: Yes, you may.

MR. BRADLEY: Your Honor, Mr. Cranston, on cross examination, opened the subject of the collaboration and the knowledge of the Japanese Government and their relation to the fishing vessels signing this agreemnt. At this time, we would like to read into the record the Japanese response to this agreement.

"Ambassador of Japan presents his compliments to the Honorable Secretary of State, and with reference to the recent incident involving Japanese fishing boats off the coast of Alaska, has the honor, under instructions of his government, to make the following representation. One, a fishing fleet consisting of the mother ship HIKK, East Pacific Fisheries Company, was engaged in herring fishing."

• • • •

[281] THE COURT: Are you reading from an exhibit?

MR. BRADLEY: Yes, your Honor, United States' Exhibit Number 57, which is a diplomatic note from the Government of Japan to the United States.

• • • •

[282] MR. BRADLEY: If the State will stipulate that the vessels mentioned in this exhibit that is in the diplomatic note is the same vessels upon which Mr. Ichimura served as a member of the operations committee—

MR. CRANSTON: Does it refer to the Banshu Maru Number 31, may I ask?

MR. BRADLEY: A fishing fleet consisting of the mother ship Banshu Maru Number 31 KK, East Pacific Fisheries.

MR. CRANSTON: We fully agree, your Honor, they're the same vessels.

THE COURT: The stipulation may stand of record. Now, you may direct a question to the witness.

• • • •

DEFENDANT'S WITNESSES

[300] DONALD M. ROBERTS

being first duly sworn upon oath, testified as follows:

THE CLERK: Please state your full name for the record; and spell your last name.

A Donald M. Roberts, R-o-b-e-r-t-s.

The COURT: Counsel?

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Roberts, what is your present address?

A 217 Bentley Drive East, Fairbanks.

Q What is your occupation?

A Regional supervisor for the Division of Protection, Alaska Department of Fish and Game.

Q How [*sic*] long have you had that occupation?

A I have been with the department for 12 years. I have been in Fairbanks six years.

Q I take it, then, you have been with the Alaska Department of Fish and Game since Alaska became a state?

A Well, since they took control of their resources as of January 1 of '60.

Q Prior to that time, by whom were you employed?

A Well, prior to that I was in the wholesale business in [301] Anchorage for a while.

Q And before then did you ever have any employment with the United States Government?

A Yes. I was employed as an enforcement agent for the United States Fish and Wildlife Service.

Q And while you were an enforcement agent were you ever employed by the Fish and Wildlife Service in the Cook Inlet area?

A Yes, I was.

Q All right. What was the first year you were in the Cook Inlet area?

A 1951.

Q All right. What were your duties there in 1951?

A In 1951 I had a title of biological aide. During the summer I worked for the Commercial Fisheries Section of the Fish and Wildlife Service.

Q All right. And generally what were your duties?

A Well, general duties for that summer for stream surveys, stream counts, and assisting with the enforcement on Cook Inlet at the peak of the red salmon run.

Q All right. Were you stationed on any patrol vessel during that period?

A Yes. I was aboard the vessel Steelhead.

Q Now, could you describe briefly the area which you patrolled in Cook Inlet while you were on board the Steelhead?

[302] A Well, I was—the red run was already started, and the area, of course, was new to me, as you understand, having been new to Alaska that year, but it is my recollection we started patrolling south of—picked up the fleet south of Kalgin Island and moved with them as the fish moved, checking boats for proper registration and seeing that they didn't fish closer than the legal distance between gear. And we boarded—would board vessels every day checking their registration against their vessel plate numbers and also we would measure lengths of the drift gill nets. They were restricted to certain lengths, and some fishermen once in a while would have a tendency to put on another shackle or two, and also they were not allowed to carry more than the legal limit of gear aboard.

We checked the vessels to see if they had extra hung gear aboard.

Q Now, is this generally the type of activity you were concerned with during these patrols?

A During my stay on the Steelhead that summer, yes, that was our primary concern.

Q While you were on the Steelhead, did you patrol the area which would be south of a line drawn from Herring Point to the southern end of the Kalgin Island, and thence over to Ninilchik?

A Yes.

Q And did you concern yourself or pay any attention to whether [303] you were more than three miles from any shoreline in that area?

A Our only concern was being with the fleet and checking them, which is out in the middle of the inlet.

Q Can you describe the area in Cook Inlet in 1960—1951 where you did patrol south of that line which I just described?

A You mean 1952?

Q Right. Is this the year you are testifying to?

A 1952, I am speaking of, yes.

Q Oh, I believe earlier you may have said 1951.

A Oh, I am sorry. I am in error. I wasn't even in Alaska in 1951.

Q Oh, all right, 1952.

A You want me to describe—would you repeat the question?

Q The area over Cook Inlet over which you patrolled in 1952 while on the Steelhead.

A Well, there was—I can't be real precisely exact, the degrees and latitude then, but it was—I was put aboard, I know we were south of Kalgin Island because there was another fellow aboard a Grummin Goose that set us off and we dropped him off at Kalgin Island to assist in the stream guard there, and then we flew south and I don't know how long we flew or how many minutes, but we flew south and they dropped—and put me aboard the Steelhead, and then that is where I spent my time for the next—it might have been 10 days or two [304] weeks.

I just really don't recall exactly now. Following the—working with the fleet, following them north as the fish moved on up from that point, mostly up along the east side of Kalgin Island and the fish moved around the island, and then on north, and then they go—they go moving back around the north side of the island.

Q Did you patrol as far south as the latitude of Anchor Point that year?

A It would be possible, but I couldn't say for sure that year.

Q Now, did you return to Cook Inlet, the Cook Inlet area in any later years?

A Yes, I did. I was there—well, the fall of '52 I took a permanent position then with enforcement, protection, of Fish and Wildlife Service as enforcement agent. The following summer I went down—well, left Anchorage on the patrol vessel Chum, well, probably a little bit after the middle of May, because the fishing season used to start in May, but it used to vary from year to year, so maybe, say, around the 22nd, 23rd or 24th of May, left Anchorage on the Chum and patrolled south and then stayed down there working on the Kenai River, Seldovia, and patrolling the fleet, the drift fishery, salmon fishery.

Q Where was the drift fishery located in Cook Inlet? Could you describe the approximate geographical location of that drift fishery?

[305] Q Yes. It is basically the same as I have already outlined in 1952, because the fish pattern from year to year is essentially the same, and we would pick the fishery up—excuse me—pick the fishery up at a line from about Anchor point, because there was no drifting allowed below that, and move in south of this Anchor Point line to make sure that there was no one fishing in there. The fish would move in and as they would cross this line, then, of course, they were allowed to start fishing for them with the drift nets. So, we would do some patrolling in this, called the closed area to drift fishing, and then as I recall, the aircraft used to fly us to that area and then we would get with the fleet and follow them right on north right up through the center of the inlet toward Kalgin as the fish moved, and right

up around the island, and the same pattern up to the north end and the fish would break off and go into the various rivers.

Q Could you describe where this closed area was located?

A The closed area I mentioned to the drift fishing?

Q Yes.

A There was no drift netting south of a line from Anchor Point south.

Q Now, did that line extend across Cook Inlet?

• • • •

[306] Q You testified, I believe, that there was a line at Anchor point. I am just wondering, did that line extend to a point on the opposite shore of Cook Inlet for purposes of the regulations?

A Well, as I recall, that was correct. There was no drifting from a line north of Anchor Point. Anything south of this line was closed to drift netting, gill netting.

Q And did you determine whether the closure to drift netting south of Anchor Point included an area more than three miles from the shoreline of Cook Inlet south of Anchor Point?

A There was nothing in the regulations that stated this.

Q Did you—

A The three miles didn't enter into it.

Q Well, let's put it this way: Did you determine that your patrol responsibility was to prevent drift netting more than three miles off shore south of Anchor Point?

A No, just to prohibit drift netting in that whole general area south of this line, and—

Q What I am trying to get at, what do you mean by "the whole [307] general area"?

A Well, there was an area, I think we used to call it the Southern District, from Point Gore and Cape Douglas north, and then there was another line that—this Anchor Point line, so there is a space in between. I see you have got a map over there. There is a space in there we refer to as the Southern District. It was

open to seining, but not open to gill or drift netting in this area, in this—I think it was called the Southern District. It was open to fishing, but not that type of gear.

Q So, did you determine that you would enforce this regulation throughout all that water area that you have just described?

A Oh, yes. This area takes in Kamishak Bay on the west and Kachemak on the east, or not the—not Kachemak, but Point Gore. Kamishak and Kachemak, excuse me, both of them. There was that whole area cross there that if there had been any fishing in this area, drift netting, we'd have apprehended them.

Q Now, did the drift fishery in 1953 exist in an area north of Anchor Point more than three miles from the shore?

A Yes.

Q And what did you determine your patrol responsibility to be in that area concerning the drift net fishery?

A We are speaking north of Anchor Point, correct?

Q Right.

[308] A Well, my area of responsibility, as I understood it by regulations, for the fisheries of Alaska, that it was from bank to bank of the inlet, the whole body of water, and people were expected to comply with the regulations, and if they didn't, regardless of where they were, a mile from shore or 10 miles from shore, they would be apprehended, if they were in violation of the regulations.

Q All right. Now, passing up 1953, did you have any duty in the Cook Inlet area in any subsequent years?

A 1954.

Q All right, what were your duties in the Cook Inlet area in 1954?

A Well, enforcement. I was agent in charge of the Cook Inlet fisheries for enforcement purposes in 1954.

Q All right. Now, generally during 1954—how long were you in this position, then?

A Well, it was for the entire summer when the fisheries were active.

Q You stated you were agent in charge of enforcement; is that correct?

A Agent in charge of enforcement for the commercial fisheries.

Q Did you ever engage in patrols that year?

A Continuously, yes.

Q And what type of equipment did you use for your patrol activities?

[309] A I had at my disposal a Grumman Goose. It's a twin-engine amphibious aircraft, and a pilot. I am not a pilot.

Q So, I take it you conducted your patrol activity with aircraft; is that correct?

A That is correct. I ran my patrol activities from aircraft, then I had two patrol vessels in the inlet, and I had both officers and agents aboard those patrol vessels patrolling, also.

Q All right, when you were engaging in these aerial patrols, where would you fly?

A Well, I covered my entire area of responsibility, which was from—well, the Cook Inlet area as described by the regulations, which is actually all—as I recall it now, it is all the waters of Cook Inlet from Point Gore and Cape Douglas north, and all the waters as tributary in this enclosure. Then I had—then I had also included under my jurisdiction for enforcement was the Resurrection Bay area and that went—took the outer—called the outer district, the outside of the Kenai Peninsula which runs from—it was Point Gore over to Cape Fairfield.

Q Now, did you engage in aerial patrols in Cook Inlet over all of the area which you have described?

A The entire area I described on practically a seven-day-a-week basis, yes.

Q And this was while you were on an aircraft?

[310] A That is correct.

Q Did you engage in any vessel patrols this year; that is, 1954?

A I was not personally aboard vessels on patrol, no, but I directed their activities, but I was not personally aboard.

Q All right. Now, we have talked a lot about patrols in the three years. Could you describe perhaps in some

more detail what was the purpose of what you have described as a patrol? What was the function of the patrol?

A Now we are speaking of this '54, or in general?

Q We are speaking in general.

A Well, the purpose of—our whole purpose in life as enforcement agents in working this fishery, of course, was to enforce the federal fishery regulations for the protection of the fisheries in the Territory of Alaska. And in our prescribed areas, of course, in the area I was assigned was Cook Inlet, and I patrolled the area, and people that later worked for me patrolled it to enforce and prohibit violators—apprehend violators of these regulations anywhere within this prescribed area of Cook Inlet and the Resurrection Bay area.

• • • •

[312] Q Would you describe for the Court the type of regulations which you were enforcing in these patrols relative to the drift net fishing?

A Well, if I follow you correctly, regulations, as I recall them, limited the length of gear and area in which you may fish; hours, days that you may fish, such as this as no—I mentioned earlier, you're not allowed to carry more than the legal limit of gear aboard. There were—used to measure sizes. this sort of thing, in relation to the drift fishery.

Q And was it in these same regulations you are describing that the prohibition of drift netting south of the Anchor Point line, was that among these regulations?

A Yes, that is correct, that is part of it.

Q Now, you have described your enforcement, your duties as agent in charge of enforcement pertaining to two areas, one the Cook Inlet area, and the second one, the Resurrection Bay area. Now, we have been talking about regulations. Generally, what was the source of these regulations? Was it a book that you received?

A Yes, they were. It was published—the published regulations, and of course, there were copies given to me by my superiors which they received from Washington, D.C.

Q All right. Now, with respect to the Cook Inlet area, did [313] you determine—this was again in 1954 while you were agent in charge of enforcement in the Cook Inlet, you did determine the geographic area over which you had authority to enforce these regulations?

A Yes, from these published regulations.

Q All right. In other words, you did determine the area, and in making that determination you relied on these published regulations?

A That is right.

MR. CRANSTON: I wonder, Mr. Clerk, could I have State's Exhibit IU. It's been marked for identification.

BY MR. CRANSTON:

Q Now, Mr. Roberts, I am going to ask the Clerk to hand you Exhibit IU, and I have a white piece of paper at page 34 of the portion of that exhibit entitled, "Laws and Regulations for the Protection of the Commercial Fisheries of Alaska, 1954." When the Clerk hands you that exhibit, I wish you'd turn to the—

MR. CHARNEY: May I please see that? What was marked here?

THE COURT: 1954 regulations, Mr. Charney, page 34.

BY MR. CRANSTON:

Q You have that in front of you, Mr. Roberts?

A Yes.

Q All right. Now, you stated you had determined the [314] geographical area over which you had authority to enforce the regulations in that you had relied on the regulations. When you referred to the regulations, was it those 1954 regulations which you have before you?

A Yes, this would be correct.

Q Now, is the regulation upon which you relied set forth at page 34?

A Yes.

Q And what regulation is that?

A Cook Inlet Area, Part 109.

Q All right. Now, would you read the number, and read the regulations, please?

A You want which? You want the particular section, or—

Q That one you read, the Cook Inlet Area.

A Well, Cook Inlet Area, Section 109.1. "Definition of Cook Inlet Area is hereby defined to include Cook Inlet and its tributary waters and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

Q All right. Now, that is the regulation you relied on; is that correct?

A Yes, that is correct.

Q Now then, based on that regulation, what area of Cook Inlet did you determine you had enforcement authority within and over?

[315] A Based on this?

* * * *

Q In order to carry out your duties in Cook Inlet as the agent in charge of enforcement, was it necessary for you to determine the area over which you had enforcement responsibility?

A Well, it wasn't up to me. It was up to my supervisors as to what I was instructed to do, the type of program to conduct [316] in the area I was responsible for in enforcing the regulations. The area I was responsible in enforcing the regulations were confined in this as described here by the definition, this being what I wouldn't go beyond, because that is another fishery agent's and another agent in Kodiak is in charge of it, so I am just concerned just in this area as described in the definition.

Q All right, and then you have testified that you patrolled throughout the entire area, water area, as described?

A That is correct, the entire area, in addition, as I mentioned earlier, the Resurrection Bay area.

Q Now, in order to carry out your duties as agent in charge of enforcement in the Resurrection Bay area,

did you determine the geographical area over which you had enforcement authority?

A In the Resurrection Bay area?

Q Yes.

A Well, yes, it was the area, to mention the general —from Cape Gore to Cape Fairfield, and all the tributaries that enter into the Gulf of Alaska between these two points, and bays and inlets in this area. This is primarily a seine fishery down there. Drifting was prohibited and we patrolled from—now, you are talking about three miles here. A little while ago I was a little confused because it didn't apply to us in our—in the way we enforced regulations up [317] there in the inlets, but down here it was a different matter. We were concerned with the three-mile limit there and we ran our patrols differently. Sometimes we would fly out approximately three miles, maybe two miles, and you can see from the air, of course, a long ways, and then fly in the bays and inlets and so forth, patrol for any illegal activities.

Q All right, I wonder if you would turn to—in that same Exhibit IU which is in front of you there, there is a page marked with a yellow marker, and do you see on that page the definition of the Resurrection Bay area?

A Part 110, Resurrection Bay Area, Section 110.1.

Q All right, is this the area over which you also had enforcement responsibility?

A Yes, that is correct.

Q And does that definition set forth the—is that the definition of that area?

A Yes. Would you like me to read it? "The Resurrection Bay Area is hereby defined to include all territorial coastal and tributary waters in the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east."

Q And it is within this area that you determined you were—that there was a three-mile limit applicable, is that correct?

A Yes, that is correct.

[318] Q Now, let's suppose, going back to Cook Inlet, and your patrols—what procedure would you follow in your patrols on the inlet, no matter what year, whether it was '52, '53 or '54, had you perceived a violation in the drift gill net fishery more than three miles from shore?

A Same way we'd handle any violation. We would have apprehended the individual.

Q Could you describe exactly the procedures you would go about in doing this?

A Well, you would detect what the violation is, and then, weather permitting, whether in aircraft or vessel, come alongside and board them, inform them of the violation that they were—section of the law they're in violation of, and advise them to proceed to Seldovia, Kenai area, where there was a United States magistrate or commissioner, and we would arraign them and charge them with the violation of these regulations.

Q Did you ever make any boardings of vessels more than three miles from the shore in Cook Inlet in the area south of a line connecting Harriet Point, Kalgin Island and Ninilchik?

A Probably 95 per cent of our boardings were in this area, were out in the center of the inlet, because that is primarily where the—where the drift net fishing took place, where the schools of fish were.

Q And would these boardings take place down as far south as [319] a line in the inlet equal to the latitude of Anchor Point?

A Oh, yes.

Q During the period of time you were in Cook Inlet, did you ever observe any Canadian halibut vessels fishing in Cook Inlet?

A No, I did not.

Q Were you aware that there was a Canadian halibut fishery carried on in the Cook Inlet?

A Not to my knowledge, not during those years.

Q Were you aware of any determination that had been made relative to allowing Canadian halibut boats to remain unmolested in Cook Inlet from a federal enforcement standpoint?

A No, I don't recall it; anything like that. There was—I just don't recall, because the regulations would prohibit it. I just don't recall anything like that.

Q When you say "the regulations would prohibit it," what do you rely on in making that statement?

A Well, back in there you are talking about 18, 19 or 20 years ago here, but somewhere in here, I don't think it would be too hard to find, there is an alien—a prohibition against foreign vessels or alien vessels fishing in Alaskan waters, and if they had been in Cook Inlet as described in the regulations—

* * * *

[320] Q Would you continue? Were you going to continue to answer?

A I guess I was. I was just—I guess I was thinking of if there had been any vessels in Cook Inlet as described by the regulations, we would have apprehended them because it prohibited the taking of fish from this area by foreign vessels.

MR. CRANSTON: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Mr. Roberts, I am going to ask you—

MR. CRANSTON: One matter, your Honor. I wonder at this point, we have had Exhibit IU marked for identification. It is the regulations which formed the basis of Mr. Roberts' [321] testimony and are federal Fish and Wildlife Service regulations, the Court could undoubtedly take judicial notice of them, but we would request they be admitted as an exhibit.

* * * *

[322] THE COURT: You may then release it to Mr. Cranston at the time of recess, Mr. Clerk.

With that understanding, it may then be received and marked as IU directly into evidence.

(Defendant's Exhibit IU received in evidence.)

* * * *

[335] FRED F. HEADLEE

being first duly sworn upon oath, testified as follows:

THE CLERK: Please state your full name for the record, and spell your last name.

A Fred F. Headlee, H-e-a-d-l-e-e.

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Headlee, what is your address?

A Box 806, Ketchikan, Alaska.

Q And what is your present occupation?

A I am retired federal employee.

Q Mr. Headlee, were you ever employed by the United States Fish and Wildlife Service in the region of Cook Inlet, Alaska?

A Yes, I was.

Q And what were the years that you were employed in the Cook Inlet area?

[336] A 1944, 1945.

Q And during those years, what were your duties?

A I was the fishery management agent in charge of the Cook Inlet District.

Q When you were in the Cook Inlet District in 1944 and '45, were federal regulations in existence?

A You say were they in existence?

Q Yes.

A Yes, they were.

Q And did you look to these regulations and rely upon them to determine the geographical area of your responsibilities?

* * * *

Q Mr. Headlee, what did you look to to determine your area of responsibility in Cook Inlet?

A It was defined in our book of regulations.

MR. CRANSTON: All right, I would ask the Clerk to hand the witness Exhibit IU.

THE COURT: The witness has the exhibit.

BY MR. CRANSTON:

Q Mr. Headlee, do the 1944 regulations appear in that exhibit?

[337] A Yes, sir.

Q All right, would you turn to that booklet of 1944 regulations? Have you found the 1944 regulations?

A Yes. It is not—

Q Then, let me ask you another question. Does the regulation upon which you relied to determine the geographical area of your responsibility appear within those regulations?

A Yes, they do.

Q And would you refer to them and tell me what regulations you relied upon?

* * * *

Q Would you refer to them and tell me—

A It is Section 209.1, Definition, Cook Inlet Area. "The Cook Inlet Area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area."

Q And what you just read was the regulation; is that correct? You have just read the regulation?

A Yes.

[338] Q Now, would you turn to the 1945 regulations as they appear in that bound volume? Are they in that volume, the 1945 regulations?

A Yes, they're right here.

Q All right, would you refer to the regulation upon which you relied to determine the geographical area of your responsibility in 1945?

A It's exactly the same section, 209.1.

Q All right, and would you read that, please?

A "Definition of Cook Inlet Area. The Cook Inlet Area is hereby defined to include Cook Inlet, its tributary and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area."

Q Thank you, Mr. Headlee. You may close the book of regulations if you wish. Now, generally, what were your responsibilities in the Cook Inlet area in 1944 and 1945? What exactly did you do?

A Enforcement of the regulations, gather statistics and make any recommendations for the following year.

* * * *

[339] Q What did you do in order to enforce the regulations? What type of activities did you engage in?

A I was aboard the vessel Teal with an outboard motor, a fast one, and we patrolled the entire inlet as much as possible with the time we had.

Q How far south of the inlet did you patrol?

A Well, mainly the lower—the Kenai Peninsula and occasionally out to the Barren Islands.

Q What was the purpose of these patrols?

A To enforce these regulations.

Q And by "these regulations," to what are you referring?

A The regulations in the Cook Inlet District as referred to in this book I just read out of.

Q All right, were you furnished a copy of these regulations?

A We were furnished hundreds of copies, and we kept them and distributed them to the fishermen.

Q Do you know why you were furnished a copy of these regulations?

A So we would know exactly what we were doing.

* * * *

[340] THE WITNESS: That is really what we relied on all the way through for area and our duties.

BY MR. CRANSTON:

Q Did you rely on any other acts or laws which may have appeared in that booklet you were furnished?

A This same booklet refers to the Alien Fishing Act.

Q And did you rely on that act?

A Absolutely.

Q For what purpose?

A For enforcing the regulations for any aliens.

MR. CRANSTON: I have no further questions of this witness, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Headlee, while you were in charge of the Cook Inlet Fisheries Management Area, how much equipment—fishery patrol equipment was in the inlet at that time?

A During 1944 we had the vessel Teal and a fast outboard motor, with a plane if we chartered it, if we needed it.

Q Is that all the equipment that was there to cover the entire inlet?

A That's right.

Q How long was it there during each season?

A During every season probably from early May until September.

[341] Q The Teal was there that entire time?

A Right.

Q And your primary concern was the salmon fishery; is that correct?

A Yes, it was.

Q Did you patrol other fisheries?

A Well, anything that was called upon in the regulations.

Q Now, you said that part of your duty as a fishery management agent were to make recommendations for the next season. This was done in a meeting, wasn't it, between fisheries agents and fishermen?

A We wrote in our recommendations and then, if there were any questions, they were all taken under advisement.

Q So, there were conferences between the fishermen and the fishery management agents at the completion of each season as a matter of procedure?

A Actually, not as there were in later years, at that time.

Q But, you did know where the fishery—the concentrated area of fishing in each season would be. You didn't patrol where there wouldn't be fisheries; is that correct?

A Wherever there was an open season, and of course, in others we patrolled mainly and then we kept the rest of the inlet occasionally in case there was somebody outside of the open areas.

Q But, the prime focus of your patrol was in the areas where you [342] knew there was fishing; is that correct?

A That's right.

Q And even then, you didn't have enough equipment to do this sufficiently; isn't that correct?

A We figured we covered it pretty well.

Q You did. Would you describe the area that one boat covered each season in the inlet?

A The entire inlet.

Q And that is the entire shoreline for beach seines and for traps?

A All over the inlet.

Q I see. Can you tell me what your title was again, please?

A At that time I was a deputy fishery management agent.

Q And who was your superior in the inlet at that time?

A I was in charge.

Q You had no superior?

A Not in the inlet.

Q Who was your immediate superior?

A I believe his name was Culvertson. He was the supervisor for Alaska fisheries. He was stationed in Juneau.

Q And who was his superior?

A The regional director.

Q During the course of your patrols, did you ever arrest or cite or board—well, arrest or cite American fishermen in the middle of the inlet more than three miles from a line [343] along the shoreline?

A Well, we didn't pay any attention to any three miles, because it was all our area and we actually didn't see anybody fishing out in the middle of the inlet.

Q So, there was no fishing in the middle of the inlet at that time?

A No, sir.

Q So, your primary patrol was not in the middle of the inlet because, as you testified earlier—

A Only when we crossed from one side to the other.

Q Did you ever see foreign fishing vessels in the inlet?

A Never.

Q Then, you never cited a foreign fishing vessel in the inlet?

A Never.

Q You never had any occasion to enforce the alien fishing regulations that you mentioned?

A No, I didn't.

MR. BRADLEY: No further questions, your Honor.

THE COURT: Any redirect?

MR. CRANSTON: I would just like one or two, your Honor.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Headlee, you testified you never cited any foreign vessels in Cook Inlet. Was there a Canadian halibut fishery carried on of which you were aware during 1944 and '45 in [344] Cook Inlet?

A Not to my knowledge.

Q Did you ever see any Candian vessels in the inlet?

A I couldn't say that I had. There was one that pulled into Port Dick in the middle of the night one night to get out of a storm. I am not sure whether it was Canadian or American.

Q What did you do on this vessel?

A I boarded it and checked to see whether his license was validated, and carried on the time of day and everything was fine, so I went back to my ship.

• • • •

RECROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Headlee, you have just spoken about a vague incident where you boarded a vessel which you weren't clear whether it was American or Candian.

A I said that I wasn't sure just to this day whether it was American or Candian. He had a validated halibut license and he was in during a storm only. Otherwise, he'd have been out.

Q Could you describe the halibut license he had, the nature of [345] it?

A The halibut fisherman is required to have a valid—a validated license which is validated by the U.S. Customs after every trip, and at that time they had 90 hours, I think.

Q Where was the vessel located?

A In Port Dick, in a safe harbor for the night.

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[456] MITCHEL P. STROHL

being first duly sworn upon oath, testified as follows:

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[457] DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Strohl?

A 96 Rue Thiers, 92 Boulogne-Billancourt, France.

THE COURT: Just a moment. Can you spell that for the court reporter?

THE WITNESS: B-o-u-l-o-g-n-e—B-i-l-l-a-n-c-o-u-r-t.

BY MR. CRANSTON:

Q What is your occupation?

A I am registrar and lecturer in political science at the American College in Paris, in France.

Q And I take it, then, that you are a professor; is that correct?

A Currently at that college I do not hold that title. I have in the past, yes, and I am called that.

Q All right, Professor, would you tell us what your educational background has been?

A I am a graduate of the United States Naval Academy. Also a graduate of the United States Naval War College, Boston University and the Fletcher School of Law and Diplomacy.

Q Now, tell us a little bit about the courses which you took in the United States Naval Academy.

A Well, the course at the Naval Academy, and especially in my time, there is primarily a professional course with a view toward the graduate becoming an active line naval officer, and [458] especially devoted to navigation, seamanship, ordinance and gunnery, a good bit of mathematics, engineering with a certain sprinkling of the liberal arts and history and English, plus quite a good bit of language study, too.

Q All right, and what sort of courses did you take at the Naval War College?

A The Naval War College is a highly professional institution primarily devoted to staff management, but with peripheral courses in such things as national strategy, international relations, international law, and also, strangely enough, public speaking and various peripheral activities.

Q All right, would you tell us what your past employment has been?

A Yes. I am a retired naval officer with 22 years of active service as an officer over and above the Naval Academy. During that time, I performed about 15 years at sea, including six specifically as a navigator, in most of the waters of the world. After that time, I was an associate professor and head of the department of gov-

ernment at Lycoming College in Williamsport, Pennsylvania.

Following that, I was executive secretary of the League of Americans residing abroad, which is a political lobby, and after that, I took my present job which I hold at the present time.

Q Now, you have stated that you did spend 15 years at sea and [459] that you were a navigator. Would you tell or describe the voyages, generally, where you have been at sea?

A In the early part of my career, I spent it nearly all in the Pacific in World War II, about one year, incidentally, in the Aleutian Chain of Alaska. At other times in various places in the South Pacific, in Japan, and following the war it was nearly all in the Atlantic with a very great deal in Europe and the Middle East, occasionally in the north of Africa.

Q Now, could you describe generally what your duties were on these voyages as a navigator?

A The navigator is, on an American naval vessel, by law and regulation, is totally responsible for the navigation of the ship and advising the commanding officer. In that connection, one had to do all of the celestial navigation on the high seas and do what in the generic term is called piloting, which is navigating the ship in sight of land, in bays, estuaries, inlets, harbors and closely along the coast. I have done this in most of the waters of the world, I think.

Q Now, when you were not serving during these years as a navigator, what were some of your functions while aboard ship?

A At a very early time, I was chief engineer of a destroyer. By the way, all my sea duty was on destroyers and small ships. In addition to that, and then somewhat later, I was a radar officer or combat information center officer, which, incidentally [460] has a very large responsibility for navigation, also.

Following that, I was gunnery officer, and then, as I said, for six years I was navigator. And following that I was a commanding officer. Then, I did one period which was more or less sea duty a good part of the time in

educating others which I was head of a mission in Saudi Arabia.

Q During your capacities on board ship while you were not serving in the function of the navigator, was it necessary that you familiarize yourself or be aware of navigation?

A Absolutely. I might qualify that by saying on a small ship this is necessary because the duties are not categorized or departmentalized to the same extent that they are on a large one, and I was never on a large ship.

Q Now, Professor Strohl, getting up a little further, have you made any studies concerning the navigational and marine characteristics of Cook Inlet in order to prepare yourself for your testimony in this case?

A Yes.

Q All right, what research have you done with regard to this?

A As a preliminary, of course, I studied a good bit about Alaska in general, including history of Alaska. Following that, and more specifically, I studied the charts, the sailing directions, all of the normal qualifications, all of the normal publications that would have to do with navigating Cook Inlet. In addition, for comparative purposes, I went [461] into the sailing directions of France, Britain. I had a translation made of the Japanese sailing directions, and then I did some comparative study with—concerning other bays in the world, I guess about 30 of them, and I did most of this work at the International Hydrographic Bureau in Monaco, which was the closest access to me.

Q All right, you have indicated, Professor, that you read or researched other publications concerning Cook Inlet. What would those have been?

A In addition to the sailing directions were the light lists, the tide tables, the current tables, some weather reports including air navigation charts. I went thoroughly into the Coast and Geodetic Survey report that was written after the 1964 earthquake to see what light that might shed upon it. I think that is about it.

Q And within this research were there materials on the subject of navigation?

A In one form or another, yes. Also, some, for example, the Coast and Geodetic Survey report of the earthquake had quite a bit to do with surveys taken in the Cook Inlet.

Q All right, in addition to your research, have you familiarized yourself in any other way with the marine and geographical characteristics of Cook Inlet?

A Yes.

Q And when did you do this?

[462] A Last summer in early July I came up here for that purpose, among others, and as part of an experience at that time I boarded the ferryboat Tustamina to travel from here to Kodiak and return, which is about a 48-hour trip, as I recall. Perhaps I had better explain a little bit how I went about that.

Q Yes, please do so.

A You see, in the normal life of a naval officer, in becoming acquainted with a particular body of water one reads all the books and if one has to know the place thoroughly, such as Norfolk or Newport, Naples, in my case, you make so many trips in and out that if you don't see something one time you see it the next time, but in this case, of course, I did not have a chance and I had to familiarize myself with it as absolutely and completely as possible within the time available, so that from the time I was on the Tustamina, I spent the—nearly all of it on the bridge and talked to the ship's officers, saw precisely what they were doing from one end to the other, made continuous observations with them, followed it all on the chart from one end to the other twice, made all the—what I thought were necessary observations of the waters and had the fathometer on all the time in order to learn as much as I could in the shortest possible time, which was all the time I had available to me. Then, following that, just in order to refresh my memory and get another look [463] two days ago in a Fish and Game Department airplane, a rather slow flying airplane, altitude about 500 feet, I made a flight all the way down Cook Inlet on one side, down to the Barrens, Cape Douglas, Cape Elizabeth, out the Barrens, up the other

side, took about three and a half hours, I think. This familiarized me reasonably well.

Q All right, I take it, then—let me ask you this: Was this sufficient, in your mind, for your preparation for your testimony in this case in order to familiarize yourself with Cook Inlet?

A Yes, I think so. To try to do it as thoroughly as possible and at the risk of appearing immodest, I think I am quite prepared to take a ship right up Cook Inlet without a pilot and put it alongside the pier out here.

* * * *

[464] Q Professor Strohl, based upon your preparation described above, have you formed an opinion as to whether or not Cook Inlet from the standpoint of a mariner, a navigator, is a body of water which is necessarily inland?

A Yes.

Q What is your opinion?

* * * *

[465] A My opinion, sir, is that Cook Inlet—as a body of water, Cook Inlet rates as a body of water necessarily inland.

Q From the standpoint—

A From the standpoint of navigating and navigating experience, yes.

Q All right, Professor, would you state what the reasons are for your opinion?

A I think, sir, that these fall into about six categories: The configuration of the shore; secondly, the concept of a landlocked body; third, the matter of entry, then the category of tides; fifth, this would be the weather, and finally, the navigation aids, I think about in that order.

Q All right, Professor, let's take them one at a time, then. State the reasons for your opinion based upon the shore configuration of Cook Inlet.

A Well, the shore configuration dictates all in that it's a rather elongated body, some 140 miles long, with varying widths, quite a good bit longer than it is wide,

rather regular, and a good bit of the eastern shore indented with one bay, Kachemak Bay and several smaller ones like Turnagain Arm. Well, Turnagain Arm is not so small. And then on the western shore the shoreline is rather more indented, somewhat more irregular. And they open out into two entries, primarily [466] two entries for navigation purposes, and the distinct sort of barrier at the bottom. That is the general picture of the shore.

Q What are the two entries to which you refer?

A One entry is—comes up through Shelikof Strait, and the other is really divided in—subdivided into two other entries, or possibly three. The third one from a navigation standpoint is pretty risky. That is Chugach Passage. The other is a pair of passages to the north and to the south of the Barrens. Perhaps it is relevant to point out in this connection that from a navigator's standpoint, the picture is quite a good bit different from simply looking at lines on a chart, because actually, the amount of navigating clear water in any of these passages is substantially less than one would look at when one looks at blue water on a map. In other words, it is about—there is about 38 miles of clear water and this is divided down pretty rapidly, 18 through Shelikof Strait and eight to the north of the Barrens, and about 12 to the south of the Barrens. We will rule out Chugach. That is all right for small boats.

Q All right, Professor, getting to the point of—you mentioned the concept of being landlocked. State the basis for your opinion in that area.

A Well, here again, I think I'd like to refer to this in a mariner's conceptual terms. First is the matter of entry. [467] You go into it. You have the conception that you must navigate by aids around you rather than by celestial navigation. You look out on all sides and you see land there.

Then, secondly, there is the matter of shelter which rises rather promptly in ones mind for navigating purposes, and then thirdly, which is often forgotten, except those who do navigating, and that is that the landlock imposes the problem of getting out, especially if sufficiently bad weather arises. You have doubt about holding ground. You have to get out in a hurry. This landlocked matter arises and plays quite considerable importance.

Q How do you apply this concept, specifically to Cook Inlet?

A In the case of Cook Inlet there is no doubt in my mind that first there is the matter of entry, how do you get into it? There is the anticipation of some shelter. It gets to be rather more important if one is with naval ships, I think, and decidedly the problem of making up your mind in light of the weather how you are going to get out of that place if you have to get out.

Q All right. Now, discussing specifically the entrance of Cook Inlet, you indicated that there may have been a problem, or a problem arises. Could you describe that as in the way it formed the basis for your opinion?

A Yes. Actually, the principle navigation entrance, as I see it occurs on either side of the Barrens, and there is a somewhat [468] lengthy process that—almost a check-off process one goes through in formulating what he is going to do at that kind of entrance. The sailing directions will immediately tell you that certain risks are involved because of tidal currents. In anticipation of weather changes and shelter, and in anticipation of the tidal currents which occur right there, and especially tide rips and eddies, and then looking again at the chart and seeing it, where the depth of water changes, I might add that the fifty fathom curve is right in a curved line going just about from Cape Douglas to Cape Elizabeth, one formulates—as a navigator, one formulates a mental picture of crossing a barrier, and that is especially what seems to happen, and in—I might add, in connection with the matter of weather and shelter, I was—had the good fortune—nobody else looked at it as good fortune—in going on the Tustamina on a rather bad day going and coming, and there was a decidedly marked difference in the water conditions and the weather as one came nearer and crossed over this barrier. You can even tell this as a navigator because the ships work in a different way. The swells are longer

outside; they're shorter inside. In fact, there is very little sea inside. There is a decided barrier down there.

Q You mentioned the tide, Professor. What attributes do you find about the tides that support your opinion?

[469] A Well, tides, in themselves, are important in connection with coming alongside a pier and in connection with where one would like to anchor, and there is quite a substantial diurnal change here over a 24-hour rise and fall. In the vicinity of Anchorage it appears to be about 29 feet. Down at Port Graham near the entrance it is about 14 feet. Now, that is all right, but what is of quite considerable importance as respects navigating inside Cook Inlet is not so much the tide, per se, but the tidal current, and in certain parts of Cook Inlet when there is an ebb or a flood, this can be rather spectacular.

For example, out here alongside this pier, the Port of Anchorage, when we came in on the Tustamina there was about three knots of tide going out at the oil derrick. This is really something to catch the eye. There can be about four or five knots out there in the middle of the channel. There is about four knots down in the vicinity of the Barrens. The book says that there is about two knots, and I think, judging from the number of course changes that they had to make on the Tustamina to compensate for tidal current, two knots was pretty conservative. I think it was more like three.

The tidal current, for purposes of interior navigation, are really probably—well, they're much more important than the tide itself. That is, the rise and fall of the tides.

Q Were these tidal currents apparent to you outside of the [470] Barren Island area?

A No, because the whole matter dissipates outside. You see, there is a funnel effect inside Cook Inlet. It channels the tide.

Q All right, you discussed the concept of aids to navigation. What, in that respect, supported your opinion?

A Well, first, if one hypothesizes that he is entering Cook Inlet, he is looking for initial aids to navigation to channel his way in. These occur on either side of the

entrance of the Barrens and on the Barrens, themselves. Then, in addition, about 15 miles eastward of the Barrens is the first sort of navigational aid pick-up point, and that is a lighted buoy. Then, of course, these get to be quite important for fixing the ship's position when that is related to the currents inside. There are a number of navigation aids inside Cook Inlet. My feeling is that they're just about adequate for the amount of traffic. Now, these, again, are for purposes of fixing the ship's position. They're quite necessary, I might add, in Cook Inlet.

Q Who has placed the navigation aids in Cook Inlet?

A Currently, that is the responsibility of the United States Coast Guard.

Q You mentioned, Professor, the weather. Did you have any reasons for your opinion based on the weather other than what you have described now?

[471] A Yes. There are—actually, when I talk about the weather, I am talking primarily about winds.

THE COURT: Excuse me. About what?

THE WITNESS: Winds.

THE COURT: Winds, okay.

THE WITNESS: From my reading of Cook Inlet, and I found this by experience, the winds inside are relatively mild with two funnel-like exceptions, and that is a sort of venturi effect coming out of Turnagain Arm and another one coming out of Kachemak, but they dissipate into the inlet. But, as soon as one passes this barrier that I was talking about before, and fortunately, again I was out there when the winds became very, very strong, indeed, and it can be—I think we were experiencing about 30 knots of wind outside, which we weren't experiencing inside.

* * * *

[474] WILLIAM RAYMOND HUNT

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Where do you live, sir?
A Fairbanks, Alaska.
Q By whom are you presently employed?
A The University of Alaska.
Q What is your position with the University of Alaska?
A I am an associate professor of history there, and the head of the history department.
Q Now, at the request of the State of Alaska, and without at this point going into detail, have you made certain studies relative to Cook Inlet?
A Yes, I have, sir.
[475] Q I want to ask you now some questions as to your qualifications to make those studies and draw conclusions therefrom. First, will you tell the Court briefly your formal educational background?
A I graduated from Seattle University in 1951 with a bachelor of social science degree, majors in business administration and literature. I graduated from the University of Washington Law School in 1958 with an LLB which has since been upgrated to a JAD. I graduated from—with a master of arts degree in history from the University of Washington in 1956. I took my Ph.D. in 1967 from the University of Washington in history.
Q Did any of your theses or dissertations deal with the matter of the Northwest or Alaska?
A My thesis was entitled, "Changing Ideas about the Cartography of the Northwest Coast."
Q Now, Dr. Hunt, give us briefly your past employment background, particularly insofar as that background is relevant to history or to being a historian.
A I taught history and geography in secondary schools of Seattle from 1959 until 1967. In 1967 I came to the University of Alaska where I have since been teaching courses relating to the north, and became head of the history department and associate professor last year.

Q In your present position as head of the history department, I [476] suppose you have divided duties or responsibilities, and in that regard I want to ask, do you presently engage in research, historical research?
A Yes, sir, I do.
Q Would you estimate for us the percentage of time you devote to historical research?
A Perhaps 50 per cent of my time.
Q The other is related to administering the department and teaching?
A Yes, sir.
Q Are you the author of any historical publications?
A Yes, sir, some 30 publications, most of which are concerned with the history of the North Pacific and the Arctic.
Q I see. To what professional societies do you belong, Dr. Hunt?
A I belong to the Alaska Historical Society. I belong to the Society for the History of Discoveries. Also, the Hakluyt Society which is concerned primarily with discovery and exploration, and the American Historical Association.
Q How long, roughly, have you engaged in historical research?
A Well, professionally, since the mid-fifties. As a history buff, for as long as I could read.
Q I'm sorry, I didn't hear you.
A As a history buff, I said, as long as I could read.
Q I see. Are you familiar and trained in the customary procedures and techniques used by professional historians?
[477] A Yes, sir.
Q Could you describe briefly for the Court what those traditional procedures and techniques are?
A Very similar to those you would be familiar with as a lawyer.
Precedence and does intense investigation of sources of materials he can find. The most important thing, of course, is to find that source material, that document, whether it be a graphic document or a Will or testiment or a personal narrative which describes an event.

Q All right, sir, will you now tell us generally what studies you have made of Cook Inlet?

THE COURT: Counsel, may I suggest with an expert witness I think it's better procedure when in your mind you have completed the qualifications of a witness that you move the Court to accept the witness as an expert in X field or whatever it is you feel you qualified him in so that the record is clear as to exactly what his expertise is in your mind and how he is received by the Court.

MR. PHILLIPS: Yes, thank you, your Honor, for that, and I move at this time that he be admitted as an expert in cartographic history, and particularly that of Cook Inlet.

THE COURT: Did you wish to respond?

MR. CHARNEY: We think that we do not object to his qualifications as a cartographic historian. The questions on cross will go to the—more to the weight of his testimony.

[478] THE COURT: The record may so show you have now been qualified in the field that you named.

MR. PHILLIPS: I have a few more questions. May I pursue those for just a moment?

BY MR. PHILLIPS:

Q Now, Dr. Hunt, tell us the studies you have made of Cook Inlet. I mean at this point to tell us about them generally.

A I thought the best in preparation—

THE COURT: Excuse me. This room is large, and like most courtrooms, it's been designed without accoustics in mind, so would you speak up? I think they're having difficulty hearing you, and I am, too.

THE WITNESS: I'm sorry. I began by considering the knowledge of the North Pacific prior to the discovery period in the 1740's, because I think it's important to know what the explorers were looking for, and I have tried to look at every map as well as every supporting written document, published document concerned with the history of the exploration, discovery exploration and development

of the Cook Inlet Region, especially as expressed in the cartographic evidence.

BY MR. PHILLIPS:

Q Over what period of time, and where did you undertake this research?

A I began particularly—particular investigation for the purpose of this case, in March of last year and initially made [479] my investigations in the resources of the University of Alaska archives and the library. Later, I went to the National Archives, went to the Stevenson Collection of Dartmouth College in New Hampshire, went to the New York Public Library, went to the Harvard University Library, and also the Library—the extensive holdings of the University of Washington Library.

Q Now, finally, before we come to your conclusions or opinions, and by the way, I suppose of further questioning, I would like for you to tell the Court if you can what significance is there to the cartographic history of Cook Inlet or any particular region, for that matter?

A Well, for the historian, sir, the cartographic material is a document, a historical document which records the current state of knowledge about the area, the current state of understanding of its importance, what is happening there. It is as much a document for a historian as any other piece of material would be.

Q I see. Did you arrive at certain conclusions or opinions as a result of this research?

A Yes, sir, I did.

Q Now, based on your training, experience, and those studies, do you have an opinion as to whether or not there has been a historical exercise of authority over Cook Inlet by those people who have inhabited its shores?

[480] A Yes, sir, I have.

Q What is that opinion?

• • • •

[482] THE WITNESS: Sir, my opinion is that there has been a historical exercise of control over Cook Inlet and its shores.

BY MR. PHILLIPS:

Q Do you have an opinion, based upon your training, experience and studies, as to whether from a historical standpoint there has been such continuity of exercise of authority as to have developed into a usage?

A Yes.

• • • •

[483] Q What is that opinion, sir?

A I believe there has been such a continued exercise of authority as to have ripened into a usage.

Q All right, sir, do you have an opinion, based upon your training, experience, and these studies, as to whether from a historical standpoint Cook Inlet has been vital to the interests of those who have inhabited its shores?

• • • •

[484] THE WITNESS: Yes, sir.

BY MR. PHILLIPS:

Q What is that opinion, sir?

A My opinion is that the Cook Inlet region has been vital to the interests of the Alaska region.

Q All right. Now, Dr. Hunt, I want you to explain to this court in detail the facts and reasons, how you have arrived at these conclusions. Will you do so?

A May I refer to my exhibits?

Q If you please, sir, and when you do so, Dr. Hunt, it would be helpful, if I may suggest this with the Court's approval, to refer to these various charts by their exhibit number. I believe you placed the same exhibit numbers on these charts—

A Yes, sir.

Q —as of other charts, copies of which are in evidence; is that correct, sir?

A That is right, sir.

Q All right. Now, one or two preliminary questions. These charts are original charts in the main or in the whole?

A No, those that I was able to acquire from my own collection and the University of Alaska collection are originals. Others are photocopies.

Q I see. Who owns these maps?

[485] A Well, the first one you see there, I own, and several others, specifically five of them, are owned by the University of Alaska Library.

Q All right. Now, with this explanation, will you proceed to give your reasons for these conclusions, using these charts and referring to them by exhibit number as you have indicated?

• • • •

A For purposes of my study of the historical cartography of Cook Inlet, I thought it best to go back to the period of time preceding the actual discovery of Cook Inlet, because I think it's very significant throughout the period of discovery and subsequently that those navigators who sought out and navigated into Cook Inlet were looking at Cook Inlet and they were looking for something else as well. They were [486] looking for a legendary, as it turned out to be, passageway that would bring ships across continent, across the top of North America, and so provide for the English in particular, who had been denied the opportunities of the Spanish and Portugese, of a quick, short, controlled way to the east. This would provide the English with a trunk to the English and Portugese hegemony over Asia and enable them to compete more effectively.

So, I began to look at maps and the first exhibit here is GI, a map published in Amsterdam in 1709, which shows one version of the state of the knowledge at that time, in 1709, is representative of the knowledge of the early 18th century, and also its preceding 17th and 16th centuries as well. You will notice that western North America was not very well known in 1709. California is shown as an island.

In the North Pacific where we would expect to find Alaska, we find a vacuum on the maps, dots, in other ways depending upon the tendency of the cartographer. Very often the cartographer would put the title cartouche there to cover his embarrassment that he doesn't really know what is there, but we see here a little land called "Ami" and one of the many names used for what cartog-

raphers who had the best scientific information available at the time used for land masses that may have existed in the North Pacific.

Now, the importance of the existence of this land, and [487] the importance of the uncertainty about the actual geography of this region was not related initially to the resources of the region itself. The Spanish, for example, out of hand, claimed sovereignty over all Pacific lands. They, of course, had established their control over Spanish America.

• • • •

Q Which of those maps and charts that you have on the board there relate themselves to background or to the early days?

A The first two.

Q Those being exhibit what?

A Second exhibit is GJ.

Q So, and would you put that aside for the moment?

A Yes.

Q Now, you have on the other stand what exhibit, sir?

A Exhibit GK.

Q Would you tell the Court what that exhibit reflects?

[488] A It reflects the first cartographic representation of what it was Bering, on his historic voyage in 1741 was supposed to have discovered of Alaska. The importance of it to me, if I may—

Q If you will, please.

A —say something is that it shows that Bering and the Russians weren't really all that clear about what they discovered and it showed the persistence of a belief in the region of Cook Inlet that there was the entry or the exit for the northwest passage that would provide the short way to the Indies by way of northern Europe.

Q Was there at that time a name given to this region which we now know as Cook Inlet?

A Not at this time, no.

Q All right, sir, do you find anything else significant on this chart?

A Only that the area which we know today as the Northwest, the lower northwest Washington-Oregon, is represented by a body of water, a huge body of water which, of course, never existed, indicating that although there was some difficulty in knowing at first what the discoveries of Bering had proved, there was a good deal more difficulty about the geographical conception of the rest of the American west which, of course, up to that time had not been explored.

Q All right, will you go to the next exhibit, please, and this [489] exhibit is what?

A Exhibit GL, the lower portion here.

Q And what significance, if any, do you find on that chart?

A Well, the significance of the activities represented on this chart, of course, have to do with the hotel that I am staying in. This is the draftsman's conception of the survey made of Cook Inlet in 1778 by Captain James Cook, and of course, it represents the first accurate, or reasonably accurate, survey of the waters of Cook Inlet, and it represents the first recorded intrusion. There may have been others earlier, but the first recorded intrusion of anybody of a western nation to Cook Inlet.

Q Was it at that time that Cook Inlet was named?

A Cook Inlet was not named by Cook. It was named by Vancouver subsequently for Cook. He, himself, searched it carefully, because he considered it a potential northwest passageway. He thought of it as a river. He tasted the water, found it not so brackish. He looked at the—

• • • •

THE WITNESS: He used the best scientific aids he had with him, and I should point out not just because I am on Cook Inlet and a fan, but James Cook is generally recognized as the greatest navigator of all time, but he was mistaken in one sense. [490] When he referred to this as a river, he was sure it was a river because of this tasting, because of the configuration of the shoreline, because of the debris in the matter, the merkiness of the water. He sent small boats up into Knik and investigated a little bit in Turnagain Arm;

not important, but interesting, I think, that Captain Bligh headed the boat party that investigated Knik inlet there, and of course, Captain Bligh later became famous for the Bounty mutiny.

But, he took possession of this area in the manner customary at that time. He landed a small boat at Possession Point. Some of his men went ashore. They raised the flag, turned some turf, had three Indians as witnesses to the event, all of them, including the Indians, had a drink of porter to celebrate this.

BY MR. PHILLIPS:

Q A drink of what?

A Porter, to celebrate this exercise of sovereignty over the inlet and the land adjacent to it. Subsequent to this, more investigation was made, of course.

Q All right, sir, does that complete your telling the Court what is indicative about this Exhibit GL?

A Yes, sir.

Q And what is the next exhibit?

A The next two exhibits, GM and GN, represent voyages of Captains Portlock and Dixon, who sailed in company. Soon after the return of Captain Cook's ships to England, and of [491] course, because when Captain Cook and his men encountered the natives of Cook Inlet, they discovered that they were very wealthy, wealthy not only in the resources of the land, but the resources of the sea, and also wealthy in having in their possession in the form of "harrow" the most valuable fur, I guess, that has ever hit the market that of the sea otter, which of course, they took from Cook Inlet. Cook's sailors did a little bit of trading there, incidentally. They were amazed to find that the natives of Cook Inlet had Russian trading beads which indicated an earlier European contact, either directly or indirectly.

* * * *

Q These two exhibits, Exhibits GN and GM, what else do they reflect of significance to you as a historian?

A In this particular, the landing of the English fur traders who came in response to the valuable discoveries

in this region with the opening of the fur trade, this is where it all [492] began, with Cook. These were the businessmen, the entrepreneurs who hauled it up, but the interesting thing to me, by the time they arrived at the tip of the Kenai Peninsula, the Russians who, of course, had been active in the waters of the North Pacific and lands of the North Pacific—

* * * *

THE WITNESS: I will get to the point at once here. The most significant single event, to me, was that the Russians indicated their presence and their assumptions of sovereignty over the area by firing a cannon which was shot past the bow of Portlock's ship. Later, they got together and divided up—

BY MR. PHILLIPS:

Q Now, let's go to the next exhibit. We come now, do we not, to Exhibits GO and GP?

A Yes, sir.

Q Will you tell the Court what significance you find with regard to these charts?

A The overall significance to me is that they represent the [493] activities of English traders and English Royal Navy explorers. In the case of George Vancouver's chart here, this is the chart of John Meares, another trader like Portlock and Dixon, but the significance to me overall is that these represent the international rivalry that almost precipitated a world war over the question of dominion of this area. It is known historically as the Nitka Sound Controversy. It was resolved without war for reasons that we don't need to go into here, but the major point is that Spain claimed all lands on the Pacific. English initiative—

* * * *

[494] THE WITNESS: To return, the most significant thing represented here is the international rivalry over the question of who owns—who exercises authority, dominion or sovereignty over the land of the North Pacific. The Spanish thought they did, although they had done little to—in the way of knowing—in the way of

settlements and development. However, they did in 1779, after hearing about the Russian interest in the area, they sent a captain to Kenai, the tip of the Kenai Peninsula, and he exercised legally what he could do in the way of an expression of sovereignty over this area by going through the standard formula of claiming all these lands for the Spanish king. This was in 1779, so these represent then a conflict among the Russians, the Spanish and the English over the dominion of these lands, a conflict that led to the seizure of Mearse's ship.

Incidentally, Cook Inlet is shown here, also interesting, on Mearse's map, Exhibit GO, as Mearse's conception of the geography of Cook Inlet, he has the following, a line to Slave Lake, and then a river and a lake system, that brings Cook Inlet out to Hudson Bay. Once again, it is persistent of the legendary Northwest Passage.

At any rate, George Vancouver was sent out from England to meet the Spanish to discuss with them this conflicting claim. The Russians, of course, were not brought into it. They weren't arguing. They were there. They had by this time established trading posts on Cook Inlet. Their headquarters were on Kodiak [495] which served Cook Inlet and their vessels were often in the waters of Cook Inlet. But, Vancouver came, did his negotiating with the Spanish. Both nations agreed ultimately that neither would claim hegemony over the area. Cook—Vancouver, who was the midshipman with Cook, incidentally, made the most meticulous survey to that time of the waters of Cook Inlet. He spent a month here.

BY MR. PHILLIPS:

Q Is that reflected in Exhibit GP?

A GP, which shows his soundings, his track of his course and his discovery that more intense investigation, that indeed Cook's River was not a river, but an inlet, and he was responsible for naming the water Cook Inlet.

Q When was that, sir?

A This was in 1794.

Q How, Dr. Hunt, would the accuracy of the charting of Cook Inlet at that time compare, say, with the

accuracy of the charting of other areas of the North American continent?

A Well, taking it back to Cook's survey in 1778, this was a decisive year in the history of the United States when George Washington and his troops spent a memorable winter at Valley Forge, no American had crossed the North American—what we know as the United States. Lewis and Clark made their expedition in 1805, so obviously, prior to 1805 nothing was known of the northwest, the lower northwest, so that it's fair to say that this waterway was internationa"y known prior [496] to any knowledge of the northwest, and much used.

Q Does this complete your summarization of these two exhibits, GO and GP?

A Yes. Vancouver, of course, contacted native peoples there and noticed they didn't have their fur robes any more because the Russians had traded them out of them.

Q Now, we come, do we not, to an Exhibit—

A GQ.

Q —GQ, thank you.

A A map published by Faden in 1802, used to illustrate, among other things the, in a sense, comparative end of the rivalry over the question of who was the sovereign power among the Russians, the English and the Americans. By this time, American vessels had joined the Russians in exploiting the sea otter wealth of Cook Inlet and other waters of the North Pacific. The sea otter was by this time near extinction, so that there didn't seem to be in the 19th century prior to the sale of Alaska any dispute any more about the Russian interest or the Russian dominance over this area, but this map of 1802 represents what I referred to just before.

Notice what we have as the state of knowledge about Washington and Oregon and the lower northwest. Virtually no place names, none that have survived. Just a blank. The Rocky Mountains are not shown. The river Yukon is not shown. The Arctic coast is vague, uncertain. Cook Inlet is, of [497] course, having been known by this time very well, is well represented.

Q When was it, Dr. Hunt, that Russia first claimed and claimed successfully, the sovereignty over Alaska?

* * * *

THE WITNESS: Sir, I—it is a little difficult to answer. The American ships, for example, which were—which penetrated the waters of the North Pacific and Cook Inlet in time did so on the sufferance of the Czar's government. There were no shots exchanged. They discussed and so on—in fact, the Russians relied upon American traders to serve Kodiak and Sitka, but with the understanding that their activity in the North Pacific was at the sufferance of the Czar.

BY MR. PHILLIPS:

Q Yes, sir.

[498] A But as to formal ukases and so on, I can't speak.

Q All right, sir, will you proceed, then, to the next exhibit, Dr. Hunt?

A Yes, sir. This is Exhibit GR, a map published in 1811 by John Carry, a map of the world. It shows the tracks of Vancouver into Cook Inlet. It shows the state of the knowledge in 1811. As just kind of fun, there was a great lake in the interior of America and a great indication of the dog nation which resided there. All this is legendary geography. We know a little bit now about the mouth of the Columbia River because Lewis and Clark have reached there.

The first settlement in this northwest region was in 1811. By comparison, the first settlement of the Russians on Cook Inlet was in 1790. This was abandoned after a time, but again, we see—we look for the river Yukon, the third largest North American river. We don't find it. We don't find the Kuskokwim. We don't find any understanding of the Arctic shore. It represents a comparison of the state of the art of historical cartography at that time.

Q Now, the next exhibit, GS?

A GS.

Q What is significant about that, sir?

A The same kind of thing. Looking for comparative reasons of the state of the geographic knowledge at the time, Cook Inlet showing as ever its well-known presence because of the interest [499] there and so on. Arctic, unknown. No Yukon River. A little bit of understanding now of the true placement of the Rocky Mountains. A development of the knowledge of the geography of the west because of the expansion of American interest in the west subsequent to Lewis and Clark.

Q Do the historical documents, Dr. Hunt, show how many Russian settlements at that time were in Cook Inlet, or are they shown on later exhibits?

A Yes, sir, they are there, shown every time. We have a place name here, a map large enough to show it. We will come to those.

Q All right, there are other exhibits that demonstrate that?

A Yes.

Q And now we come, if you please, to Exhibit HB, and what is significantly shown on that chart, Dr. Hunt?

A The entire area of Alaska is named as a Russian possession. It is 1837 now, so that a knowledge of other territories is much better displayed here. We still have to wonder where the Yukon River—I keep referring to the Yukon, of course, because it is the most prominent waterway in the entire region except for Cook Inlet. It's called the River Norman here in the lower course of it, but no indication of where it originated or its tremendous size.

Q All right, sir, let's go to Exhibit GW. What is shown there, sir?

[500] A A map of—a map published in 1855 showing the British, Russian and Danish possessions in America, Russian possession indicated in Alaska and Cook Inlet by the green confusion. Finally, we have the River Yukon, but a broken line to indicate that the cartographer didn't know whether Yukon found its source by joining with the Colville emptying into the Arctic, or whether it did, as in fact it does, flow to Norton Sound.

Q Does this show the increasing Russian dominance in the area of Cook Inlet?

A Well, the Russian activity was continuous from the mid 18th century, and actually, I think I am a little bit out of sequence here, I see here the exhibits that are Russian. Now, I think we can dispense with this one.

Q All right. Now, we have come—we want the record to show Exhibits GU and GV; is that correct?

A Yes, sir.

Q And what do you find significant on these maps?

A The most significant is the fact that in 1826 when Exhibit GU, the map represented by Exhibit GU was drawn, we have a very close Russian—look, you have to remember that St. Petersburg, the capitol of Russia, was some 7,000 miles from the waters of Cook Inlet, but enough concern about the importance of mapping and charting, it was the waters of Alaska, including Cook Inlet, because of the economic activity there, to [501] draw a special, a particular atlas of the waters of the region, a greater one a few years later, 1859 Tebenkof—it may have even been done in Sitka by real draftsmen, but notice the detail here permits us not only to discover the places of settlement where the posts existed, but a careful delineation of the soundings of the waters because navigators used these. They were not—these were not objects you hung on your wall for—

* * * *

Q Let me re-word it. What, from a historical standpoint was the state of activities in the Cook Inlet area at that time, and I am referring to the time that is reflected on Exhibit GV. You will have to tell us what time, again.

A I think I said 1852 is the proper date. Well, the existence of trading posts on both sides of Cook Inlet indicate a good deal of economic activity. We don't have a lot of records. We can't consult statistics to show how many ships in such-and-such a year, but the existence of what at that time four—at least four trading posts on the shores of Cook Inlet indicate the kind of activity, sea otter activity in particular, [502] that was going on. They also indicate that, as does the existence of the trails leading from Cook Inlet to other regions, Cooper River, for example, Cooper River is some 300 miles from Cook Inlet, but the Indians of Cooper River had no closer central place to trade with the Russians than Cook Inlet, so the historic trail was established. Their trails across the Alaska Peninsula, across Iliamna and so on, this was the focal point in south central Alaska for the Russian trading activity.

Q Cook Inlet?

A Yes, sir.

Q All right, sir, shall we go to these other exhibits? The next one is GY; the next one is GX. What is significant about that?

A The significance of the exhibit is that it's the first chart of Cook Inlet published after the acquisition of the territory by the United States. You all know, I am sure, the history of discussion of whether or not people at the time thought it was a good thing to buy Alaska from the Russians and so on. The Russian-American Company had folded up because in Cook Inlet and elsewhere they had depleted the resources, the marine resources, the sea otter in particular, upon which their trade depended. They didn't find it worth while to maintain themselves. They were afraid of foreign aggressions taking that away from them, so they took the [503] chance to sell the territory to the United States.

And we think in Cook Inlet they got a pretty good bargain. From that time—we are now in the—excuse me.

Q Yes, let me try to bring you forward. We now come to Exhibits GY, GZ and GA, which for purposes of display here, you have put together, do you not?

A Yes.

Q And would you tell us about those, please?

A With the American interest in Alaska, we have an increased demand by Americans that very meticulous and careful surveys be made of all of the waters so that the traders and other voyagers are not inconvenienced in any way, and I have only used the first U.S. Coastal Survey documents here, 1868 and one of 1886, and I think 1899, as representative of the gaining of knowledge as represented by the charts of the U.S. Coastal Survey of

the area more detailed each time. I could have showed 20 different surveys for this period of time, from the acquisition to the end of the century.

Q What difference, or what relevance is there? What matters is that as you proceed in time, these maps show more and more detail on them with reference to Cook Inlet?

A It means usage and it means—usage means a demand for knowledge to safeguard navigation.

Q Now, we come, Dr. Hunt, to Exhibit HE and H—I'm sorry, Mr. Reporter, HC. What is significant about it?

[504] A It represents the military reconnaissance of Alaska. It represents the intense interest in Alaska that followed the Klondike discoveries. It represents also a geographic interest in this by us. If you are in the American government seeking to permit your citizens to hunt for gold in the interior of Alaska, of finding an American route, and this, of course, is what people demanded, "We don't want to go by way of Skagway and Dawson into the interior of Alaska. Where is our American route to the interior so we don't have to face the Mounties and the customs." So, the United States geographers, both military and Geological Survey, looked at the map, looked at Cook Inlet which is the obvious penetration of the Alaska subcontinent, and it shows the Cook Inlet area as the region from which it made its investigations of the possible establishment of an American route to the interior of Alaska, and this is represented in Exhibit HC.

The investigations shown here with those from the top of the Cook Inlet into the Tanana Valley by Captain Glenn.

Q What date was that, sir?

A 1898. Similar in this exhibit—well, both exhibits here, HD and HE, show the interest of the most responsible government agency as far as geographic knowledge and resources knowledge is concerned. In Cook Inlet, this was the United States Geological Survey. Notice this huge area here which was tentatively investigated and mapped

by the Geological [505] Survey. Notice, too, it's shown better here, but notice that the entry to this investigation not only of the interior but Seward Peninsula and Kuskokwim region was begun from an obvious starting point, the entry of Cook Inlet, the top of the Cook Inlet.

Q Now, we come to HF. What, if anything, is significant about it?

A This was—this is the reproduction of the present United States Coast and Geodetic Survey. I have another one behind that. This shows the northern Cook Inlet and the other one shows the upper—but all of these numbers and the dates which are in brackets below the numbers represent the particular numbered survey of a particular part of Cook Inlet and the date the survey was made. Now, this was done for me by the people in Washington at the United States Coastal Geodetic Survey, but the thing is that is impressive to me in this—

MR. CHARNEY: I object to this testimony as hearsay.

THE COURT: It is overruled.

THE WITNESS: —impressive to me about this is that the waters of Cook Inlet have had the attention of the vessels and the officials of the Geodetic Survey to the extent of their having compiled 79 distinct separate surveys from 1905 to the present. To me, this means that there must be some action there.

[506] BY MR. PHILLIPS:

Q Now, wait just a minute. Before we leave this, and to make sure the record is clear here, HF is of what part of Cook Inlet?

A This is the lower Cook Inlet.

Q Which is referred to, I believe, on the exhibit as the southern part?

A Yes.

Q And this area in the middle here, I take it, is the water.

A Yes, sir.

Q And these lines represent the shore, of course.

A Yes, sir.

Q And while my eyes are perhaps not too good, I don't recognize just where we are here, what various land parts of Cook Inlet are shown.

A This is the Kenai Peninsula. Of course, the Alaska Peninsula here, Iliamna. We have Kamishak Bay here and—

Q And do I understand each of these numbers is representative of a survey conducted by the United States Government?

A At a particular date, yes. The date is given.

Q So, without going into detail, you could count the surveys as of this time and show the dates of each one?

A Yes, sir.

MR. CHARNEY: I object to this as hearsay.

THE COURT: Overruled.

[507] THE WITNESS: This is the northern Cook Inlet and it is companion to the one we were just looking at, again showing the specific surveys.

BY MR. PHILLIPS:

Q Wait just a minute. You are getting ahead of me. That is what exhibit number?

A HG.

Q And that is the counterpart of the southern part?

A Yes, sir.

Q That is, HG shows the northern part?

A Yes, sir.

Q And are the numbers there representative of the number of times our federal government has surveyed this land—this body of water?

A Yes, sir, 79 times.

Q And what does Exhibit HH show?

A It's the concluding exhibit here, and it illustrates the survey made for a railroad in 1909 from Cook Inlet to the Yukon, an aborted project, a ghost railroad, if you will, one that was not built, but it indicates to me that to the railroad builders who conceived of the idea of reaching the Yukon and the interior, they considered Cook Inlet the obvious entry place. I didn't show a map here of the actual route of the Alaska Railroad which,

of course, does penetrate into the interior of Alaska, our only railroad, by way of the [508] Kenai Peninsula.

Q What does HH show with reference to Cook Inlet?

A It shows Cook Inlet as the terminal point of a proposed railway that would reach the Yukon.

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[520] ROBERT N. DeARMOND

being first duly sworn upon oath, testified as follows:

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DIRECT EXAMINATION

BY MR. CRANSTON:

Q Dr. DeArmond, what is your address?

A 42 Calhoun Avenue, Juneau.

Q What is your occupation?

A I have two occupations. One is editor of the Alaska Journal, a quarterly magazine of Alaska history and arts, and I am also employed by the State of Alaska in the State Library as a researcher in the historical library division.

Q How long have you been editor of the Alaska Journal?

A Since it was founded just over a year ago.

Q And could you tell us a little bit about what that journal is? What is the type of material published in that journal?

A Principally historical materials relating to Alaska in both Russian and American periods. Also some material on the arts particularly the native arts of Alaska.

Q And could you tell us about how many people are on the editorial staff of this journal?

[521] A Three.

Q And are you one of those individuals?

A I am one of the three. The other two are concerned principally with the art end of it.

Q What, then, would be your primary responsibility?

A The historical material?

Q Now, you stated you were employed by the State Historic Library in Juneau; is that correct?

A That is correct.

Q And what is your occupation there?

A Researcher is the title, and mostly in historical research questions that come in from not only Alaska, but outside Alaska on Alaska history questions.

Q How long have you had the position of researcher with the State Historical Library?

A About five years.

Q And could you tell about how much time you spend during a day doing this sort of research?

A It varies from day to day, but it amounts to about 20 hours a week.

Q And generally what is the subject matter of your research?

A Well, the whole history of the State of Alaska. We get questions on all subjects, maritime history, mining history, legislative history, almost any variety of subject, because they come from all kinds of people doing all kinds of historical [522] work.

Q All right, in addition to your activities with the State Historical Library, have you done any other work in the subject matter of Alaska history?

A Oh, I have been writing and editing Alaska history, yes, for very nearly 40 years now.

Q And does this—have these activities involved research, historical research?

A Yes.

Q Are you a member of any professional societies?

A Yes, a number of them. The Alaska Historical Society, the Pacific Northwest History Association, the American Association for State and Local History, Western Histroy Association. Possibly others.

Q Have you ever had any positions in these societies as a director or otherwise?

A I was a member of the board of directors of the Alaska Historical Society for three years.

Q Now, you stated you have been engaged in research of Alaska history for approximately 45 years. Can you tell briefly what some of the research projects that you have engaged in during that period of time have been?

A One was a study of the discovery of gold and development of gold mining in the Gastineau Channel area that resulted in the founding of the cities of Juneau and Douglas and their [523] early mining history that was published in book form under the title of "Founding of Juneau." A study of place names in approximately that same area which was published under the title, "Some Names Around Juneau," a study of geographic names. I served as a consultant to the State Department on a special project that produced the Alaska Dictionary of Placenames in 1967. During the period 1953 to '57, I was an administrative assistant and research assistant to the Governor of the Alaska, V. Franklin Selman, and I produced a number of studies, one of which was given an award of merit for state and local history. It was a study of Alaskan legislative procedures to attempt to create the office of a legislative governor in Alaska, and covered a period from 1916 to 1953.

Q You indicated, Mr. DeArmond, that you had published a book concerning the history of Juneau. Do you have any other publications?

A A good many newspaper and magazine articles in the historical field, Alaska Life magazine which was published from about 1935 to 1950. A series of newspaper columns on historical subjects which ran in four daily Alaska papers during the late forties and early 1950's. Publications in Alaska Sportsman's magazine which is now Alaska Magazine and has been in continuous publication since 1935. I have published articles in that since 1937 on an intermittent basis. And for a number [524] of years was editor of that magazine and wrote a section each month on Alaska history titled, "This Month in Alaska History."

Q Now, in this experience with Alaska history, have you determined the sources which should be researched in order to find or determine Alaska history?

A Well, Alaska Historical Library was founded by an act of Congress in 1900 and has probably the largest collection of purely Alaskan materials under any one roof in the United States. It has most of the published material on Alaska. Its manuscripts holdings are rather small. It hasn't been active in the field of gathering manuscript material.

Q Are there any other sources that you consider relevant to research in Alaska history?

A The library, and particularly the manuscript collections of the University of Alaska, they have a much more extensive manuscript collection in various fields, and the National Archives in Washington, D.C. has, of course, large holdings of original materials, ships' logs, reports of army officers, navy officers, reports of various government officials and the branch of the National Archives, the Federal Record Center at Sand Point, a suburb of Seattle, Washington, also has large Alaska holdings of original source material.

MR. CRANSTON: Your Honor, at this time I would submit Mr. DeArmond as an expert in Alaska history and an expert in the research necessary to determine Alaska history.

[525] MR. CHARNEY: No objection.

THE COURT: All right, the Court so declares Mr. DeArmond to be an expert in the subjects named. You may continue.

BY MR. CRANSTON:

Q Now, Mr. DeArmond, for the purposes of your testifying here today, have you made a research study of the Cook Inlet area?

A Yes, I have.

Q And with regard to that study, what were the general subject areas which you researched?

A When I was first asked to undertake this study by the office of the Attorney General in March 1968, I was left pretty much on my own as to what areas to cover. It was a matter of discovery, finding what material was available on the Cook Inlet area. In my

studies, I pretty much narrowed it down to the fields of the fur trade which was the first big business in the Cook Inlet area and had the most records; the fishing industry which came third in point of time, but second in point of importance to the fur trade in the early years, and then surpassed the fur trade in economic importance; the mining industry which started before the fishing industry, but reached its magnitude, and the shipping on Cook Inlet.

Q Now, with regard to the research which you did in the subject what sources did you research? What was the source of your research material? In other words, files locations.

[526] A The Alaska Historical Library in Juneau, first of all, since I was living in Juneau and it was readily accessible and I was most familiar with it, having used that collection for—since 1930. Secondly, the University of Alaska Archives at College in the University Library. I spent a portion of the summer of 1968 there. The National Archives in Washington, and the Library of Congress, principally in the National Archives, and I spent two months there, six weeks in 1968 and two weeks in early 1969. And incidentally, in traveling back and forth to and from Washington, stopped in Seattle at the Federal Records Center and searched that material.

Q Do you consider that the sources which you researched were—those were all the sources necessary to complete the project concerning Cook Inlet?

A They were all that were available to me. I don't read Russian. I would like to have made a trip to Moscow or Leningrad and researched Russian source material, but that wasn't feasible.

Q Over what period of time did you do this research?

A Over a period of approximately two years, starting in March 1968.

Q And ending, I would take it, in 1970; is that correct?

A Right.

Q You have any idea of the number of hours you may have spent on this project?

[527] A Well, I would estimate that it would amount to about six months of 40 hours a week labor, although this wasn't continuous. It was intermittent. Other jobs that I had, other duties intervened so it wasn't a continuous effort.

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Q Now, Mr. DeArmond, I will show you what has been marked for identification as Exhibit HV, which is described as Historic Development of the Cook Inlet Basin. This exhibit consists of a base map with two overlays, and I would ask you just to take a minute, please, and examine this exhibit.

A Yes, I am somewhat familiar with it. I have seen a rough of it before the final preparation.

Q Now, I would ask you if the placement of the symbols on that exhibit which are identified as a red triangle indicating Russian settlements, a green circle indicating trading posts, a blue square indicating settlements, a concentric circle indicating fur farms, an octagon representing maritime boardings, a green line indicating overland routes, a symbol in the form of a can indicating canneries, a symbol in the form of a railroad track indicating a railroad, a symbol in the form of an ax and hammer indicating mining activities, [528] and oil drilling apparatus indicating oil drilling activity.

I would ask you if the placement of those symbols on that map depict graphically the results of the research which you have just described?

A Yes, they do.

Q All right. Now, Mr. DeArmond, we are now looking at the base map which the legend indicates, it is to 1867, and would you describe the activity represented by the symbols on that map, and again the description being based on the historic research which you have just described.

A The four triangles on here represent Russian trading posts founded by Russian companies. The three of them, the lower three here, at least prior to 1799 when the Russian-American Company was founded. The first

two, one at English Bay as it is now known, the other at Kasilof, founded in 1786 by two rival trading companies. And at that time, until 1799, all of the Russian fur trade was in the hands of individuals or very small company of three or four men with one small vessel. The third one at Kenai was founded in 1791 by the same company that founded the one at Kasilof and I was not able in my studies to discover why they founded two so close together. I think that they found that Kasilof was untenable because of the poor harbor and difficulty in entering the rather shallow river there, but I couldn't find any testimony to that effect. All I really know about Kasilof [529] after its founding was that it apparently had been abandoned sometime before 1867 when the Americans took over. This four, this one was known as St. Paul and both its location and its actuality are in some doubt. It was reported by several authorities, but I have found no history of it. It was very close to the present Indian village of Tyonek. It may have been founded and quickly abandoned, or for some other reason, perhaps it never was founded at all, perhaps it was only a plan to found it. The three, English Bay, Kasilof and Kenai—Kenai especially—remained viable communities for some purpose ever since the founding of those posts

Q Now, did your research disclose the reason for the settlement of the Russian posts as you have just described them?

A They were for the purpose of gathering furs produced by the aboriginal inhabitants, which in this area were a mixture of Aleuts and Eskimos, and were—and in the upper inlet here some Amabaskin people.

• • • •

[535] Q Mr. DeArmond, could you—you were speaking on the first map on Exhibit HV, and would you please state what time period or the duration of the four Russian settlements which you have been discussing was?

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[536] THE WITNESS: The most southerly of the settlements marked on this map, Alexandrovski, under

the Russian name, or English Bay as we call it today, was founded in 1786. Kasilof, known to the Russians as Fort St. George, was founded that same year, 1786. The one at Kenai, Fort St. Nicholas, was founded in 1791. The most northerly, Fort St. Paul, I have not been able to [537] establish the date on it or its duration.

English Bay continued until the American occupation after which the site was occupied by American fur companies. Kasilof, Fort St. George, was abandoned some date after its founding and I can't give you that date. I was unable to find it.

Fort St. Nicholas at Kenai was continued in operation until the transfer to the United States of 1867 and was then occupied both as a fur trading post and as an army base or post of the United States Army in 1868.

BY MR. CRANSTON:

Q Now, Mr. DeArmond, could you tell the Court what the historical purpose of these trading posts was; what was their main activity based upon?

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[538] THE WITNESS: These three Russian posts, and perhaps the fourth, were established to participate in the fur trade, and at that time, at the time they have their establishment, that existed almost solely in the sea otter trade. The sea otter was the fur [539] that brought the Russians to Alaska. Sea otters were discovered in Alaska by the Bering expedition in 1741. It was a naval exploration, scientific expedition, and was not looking for furs, but the crew members secured some sea otter furs and started an immediate fur rush to Alaska which began in 1745, and it followed the Aleutian Chain. Landing first at Attu, it followed the Chain down to the Alaska Peninsula, eastward to Cook Inlet in the 1780's.

The sea otter is a marine mammal living practically its whole life in the ocean. It does not come ashore to breed as the fur seal does, but occasionally comes to shore for rest, apparently after storms, but is found—

THE COURT: It is no longer responsive, counsel. Objection is sustained.

MR. CHARNEY: I objected.

BY MR. CRANSTON:

Q Could you indicate, Mr. DeArmond, what the relationship of the sea otter to the trading posts in Cook Inlet was?

A Well, the sea otter were found in all parts of Cook Inlet as far north as approximately Kalgin Island or Kenai, approximately up to here. These were the most northerly sea otter hunters as far as I have been able to learn, but they were under the—all of the most southerly parts of the bay.

Q All right. Now, Mr. DeArmond, we have the first overlay to Exhibit HV which is intended to be representative of the time period 1867 through 1900. Taking each symbol in the order [540] set forth on the legend, would you explain to the Court a brief history relative to those symbols as they are placed? We will start with the trading posts.

A These green dots represent American trading posts that were either taken over from the Russians by an American company or were established after the transfer in 1867. Again, looking geographically, Cape Douglas on the cape of the same name was established by the Alaska Commercial Company. I was unable to find the exact date, but it was at least as early as 1878.

Cape Douglas was a prime sea otter hunting area, the center of a number of villages in this area.

On the west side, the same location as the old Russian fort at English Bay was taken over by the Americans by at least two different American companies successively, first Tittle & Company, and then Alaska Commercial Company. That was based primarily on the sea otter trade. Seldovia, there were also two different companies, the Alaska Commercial Company and the Northwestern Commercial Company—Northern Commercial Company, excuse me, both of which were interested primarily in the fur trade, and to a large extent, in sea otter trade.

This was at Anchor Point. It was a very short-lived station, and I don't know why, it seemed to have lasted only a couple of years in the late 1890's, perhaps it was based [541] on some coal and gold mining that took place there. I am unable to determine that.

On the west side of the inlet at Oliamna was Alaska Commercial Company's station partly for the sea otter trade. The sea otter hunting was carried on along this part of the inlet.

Q You referred to this part of the inlet. Would you indicate—

A The western part off Augustine Island, and also handled some of the largest trade from the inland area, from the Iliamna-Bristol Bay area.

Next, on the north, Kasilof had been a Russian post, abandoned, and the American Alaska Commercial Company established the post there. Kenai was a continuously operated post, first under the Russian flag and under the American until well after the turn of the century. As I stated previously, that was about the northern range of the sea otters, and it also had some other fur trade there with two or three different companies there, Alaska Commercial Company, Shirpshire—

THE COURT: What was it? Say them again.

THE WITNESS: The Alaska Commercial Company, Shirpshire, other companies were stationed at Kenai. Going on up the line, at Tyonek Alaska Commercial Company had a station, and C. D. Ladd, who is also a fisheries operator, established a trading post. Susitna Station was principally based on upland furs drawn from [542] a vast area from the Susitna River. Knik likewise drew most of its furs from the Matanuska Valley clear to the Copper River Valley.

BY MR. CRANSTON:

Q Could you give the approximate time duration of each of these posts?

A Well, Cape Douglas from, as I said, approximately 1878 until 1900 or later. I am not sure exactly. English Bay, which was established by the Russians in 1786 and continued until after 1900 by the Alaska Commercial

Company. Kasilof was abandoned by the Russians, reestablished by the Americans, but not continued for very long. There was a station there in 1893 and it continued at least until 1900. The Iliamna station began operations in 1890 and continued until 1900. Seldovia was established by two different companies, the Alaska Commercial Company in 1894; Tittle & Company in 1871 or '72. Anchor Point, as I said, Alaska Commercial Company was very short-lived, around 1896, '97, '98. Tyonek was established by the Alaska Commercial Company in 1875 and by C. D. Ladd in 1892. Susitna Station was established in 1895 and continued well into the 20th century. Knik Station was established in 1882 or perhaps earlier, sold by the Alaska Commercial Company in 1898, on the west side of the Knik Arm and continued until the building of the Alaska Railroad in 1916 or '17. [543] Q Has your research disclosed the basis upon which these posts were established?

A I don't understand your question.

Q What, generally, was the trading that was engaged in of these posts?

A It was the fur trade, buying and selling goods to fur hunters.

Q And what general type of fur was that?

A Principally the sea otter in the southern part of the inlet from Kalgin Island south. Upland furs such as beaver, martin, fox, mink in the Susitna and Knik upper areas.

Q All right. Now, going to the settlements, could you,—if there is anything to add relative to the settlements that you did not state in your discussion of the trading posts, would you please do so?

A Well, most of the trading posts also had settlements of native peoples, and a few White Russian priests, usually, and a church in addition to the trading post. The exception was Homer which was never a trading post, but was based on mining, some gold mining and some coal mining. Two settlements up here at Sunrise and Hope were based entirely upon the gold rush in the 1890's and they also became trading posts, but had noth-

ing to do with the fur trade, and I think this one is out of our area.

Q By that, you refer to—

A To Seward.

[544] Q All right, I note that there is a symbol for fur farms. Could you describe the location of those and what their historic significance was?

A Well, the raising, principally, of foxes for their furs began in the 1890's in this part of Alaska, first on some of the off-lying islands here just at the entrance to the inlet, and then other establishments at English Bay and at Anchor Point and Homer going up to Kenai. They were raised—mostly black and silver foxes raised for the fur market.

Q All right, the last symbol on the map relative to locations is entitled "Maritime Boardings." Could you tell us what your research has disclosed on that with relation to the symbols on the map?

A Well, there are five shown here. They were in two different groupings. In 1892—in June of 1892 the United States war ship Mohican, which was assigned for that summer to what was known as the Bering Sea Patrol Squad, patrolling the entire coast of Alaska in connection with fur seal hunting and other marine activities, the Mohican steamed into Cook Inlet and sighted a schooner that was hunting sea otter off Cape Douglas. The steamer's log gave a position by latitude and longitude which placed the vessel about 24 miles off Cape Douglas.

Q What was the name of the vessel?

A The schooner was the Kodiak, owned by the Alaska Commercial [545] Company, and she was under Captain Hanson and had a crew of native sea otter hunters with their skin boats engaged in hunting sea otters. The commander of the Mohican, Commander Johnson, I believe his name was, ordered the Kodiak to cease and put a crew abroad and sent her to Sitka for violation of the statutes which prohibited hunting of sea otters by whites.

Q Would you discuss the other symbols on the map?

A The most southerly one was the next vessel over-

hauled and boarded by the Mohican, and she was something of an oddity in the sea otter hunting—fishing. She was a steam cannery tender from Kenai. The cannery there was not operating that summer due to a poor market and in order to employ their steam vessel which otherwise would be idle, they engaged a crew of—or loaded aboard a crew of sea otter hunters from Kenai and took them out with their skin boats, to hunt. They were so engaged when boarded by the Mohican, also seized.

Q What was the name of that vessel?

A The Jenning.

Q And you indicated that to be the most southerly on the exhibit?

A Right. I believe she was about 9 miles off Cape Douglas, something in that area. The Mohican then steamed on to the northward and sighted another vessel named the Lettie and the same procedures. The Lettie was also owned by the [546] Alaska Commercial Company which owned most of these shore-based stations.

Q All right. There are two other symbols indicating maritime boardings. Would you—and just before you get to that, did you determine the date of these three boardings, the Kodiak, Lettie and Jenning?

A June the 6th, 1892.

Q All right. Now, let's take the other two symbols representative of maritime boardings.

A Well, I might say in the first place that the vessels seized here were found not guilty by the court in Sitka because that had some bearing on these other two. In 1893, June 9th, I believe it was, 1893, a revenue cutter entered Cook Inlet on regular patrol, the same type of patrol that the Mohican had engaged in in 1892, and 12 miles off Port Graham sighted a schooner sea otter hunting and boarded her. The name of the schooner was the Mary Anderson, and the captain was named Green. The circumstances were much the same. She had a white captain and native sea otter hunters with their skin boats and presumably, because of the judgment of the case the year before in which that type of operation was found not to be—

MR. CHARNEY: Objection. This witness is now testifying as to opinions of the court and decisions of courts. I don't think this is within—

[547] THE COURT: The Court can take judicial notice of the courts. Mr. Cranston, you may proceed. The objection is sustained.

BY MR. CRANSTON:

Q Mr. DeArmond, would you tell us basically the circumstances of the boarding and the location, and then, of course, we do have the court's decision in Kodiak on which we can rely as to the law.

A The Mary Anderson was boarded and examined and released. She was not held and was not seized. Later that same day, the same revenue cutter boarded another small schooner, the Alder. She was not sea otter hunting and the master of the revenue cutter told him that it would be legal for him to go sea otter hunting and proceeded, according to the log of the revenue cutter, proceeded to pick up a native crew to engage in sea otter hunting.

Q All right. Now, the last line is one that indicates overland routes. Could you give a brief discussion as to the historical significance of the overland routes?

A Well, this, I assume, refers to these.

Q Those green lines with arrows, that is correct.

A Well, this connected to the Knik Station was an overland route that came from at least as far away as the Cooper River for furs, as well as the Matanuska Valley and other areas around the Matanuska. The Susitna River drainage is an immense one that drains from the southern and western [548] slopes of Mt. McKinley, and the furs from there, the people from that area traded at the Susitna station. The Iliamna station was the terminus of a route that went as far as Bristol Bay and was used not only by fur hunters, but the United States courts which went to Bristol Bay for court proceedings. Rather than make the long and rather rough trip through Unimak Pass by boat, the courts often walked from Iliamna across to Bristol Bay. The other

one shows the route of the Alaska Railroad from Seward to approximately Sunrise.

Q I note a route going out east of Turnagain Arm, also. Did you discuss that route?

A That was a route used by the—during the Cook Inlet gold rush to Sunrise and Hope in the 1890's. Miners, prospectors, gold seekers landed at Portage Inlet, the present location of Whittier, and climbed over the glacier and came down along Turnagain Arm to the gold fields. They didn't have, particularly, any winter and early spring in the upper part of Cook Inlet which was still blocked by ice and impassable to vessels.

Q Thank you. Now, we will turn to the last overlay. Now, Mr. DeArmond, the second overlay indicates the time period 1900 through 1959. I would like to ask you to briefly describe the symbols and their location, and with reference to the time period involved. First, are there any new trading posts on this second overlay which you did not discuss [549] in your earlier testimony?

A No, I believe not.

Q All right, are there any new settlements which you did not discuss in your earlier testimony?

A I don't believe so, no.

Q All right, or are there any new fur farms?

A No.

Q All right. Now, generally, then, the new symbols that of canneries, would you briefly describe perhaps the number of canneries and their historical significance?

A There was some area—some of the canneries should have been shown on the previous overlay since the earliest one at Kasilof dates back to 1882, the first cannery established on Cook Inlet, and one of the first two salmon canneries in all of western Alaska was established at Kasilof—Kasilof River in 1882 by a San Francisco Firm, the Arctic Fishing Company. That cannery had a long existence, continued in operation almost continuously until 1923. In 1892 it was taken over by the Alaska Packers Association, one of the very large salmon canning companies on the Pacific Coast, and was operated by them. It was a typical early-day cannery in that the

crews were brought in by sailing ship which also brought all of the supplies and the sailing ship was usually anchored for the summer on the west side of the inlet in a good harbor.

The next established cannery was at Kenai, 12 miles to [550] the north, and that also has been a cannery ever since. That particular cannery did not continue in existence continuously, but there has been a cannery at Kenai most of the time since the 1890's.

The next, the third cannery, was the second one at Kasilof near the original one was built by George W. Hume in 1890. A second cannery was built in 1898 and that has—that site has been used by various companies until the present time.

The fifth cannery in 1900 was at the Chilitna River very near the present village of Tyonek. There are a great many canneries built in the period 1911 through 1913 or '14; English Bay, Seldovia, Ninilchik and Snug Harbor on the west side. There were in all 60 canneries built on Cook Inlet between 1882 and the present date. I don't—I can read them all off, but—

Q I wonder—perhaps it would be helpful if you could describe what the historical significance of these canneries was. What did they use for their resources, and where did the resources come from?

A Well, they were all salmon canneries until very recent years when there's been some processing of crab and other shell fish, but the basis for the industry was salmon which entered Cook Inlet and progressed up the inlet to various spawning streams all the way from almost at the entrance clear up to [551] the head of Knik Arm and the Susitna River. All of the early canneries brought in their primary help and probably half of their fishermen from outside Alaska, usually from San Francisco. The rest employed natives, both for fishermen and cannery hands. They fished on both sides of the inlet from virtually Cape Douglas up to Tyonek, and from Cape Elizabeth up the shore on the east side of the inlet using gill nets, drift nets and traps, set nets. The early ones all used sailing ships, mostly square rigged ships,

which brought up all of their cannery supplies, box chutes for making the cases, and cans were brought up. The crews and the fishing gear were laid up during the summer in some satisfactory anchorage and then in the fall loaded up the pack and crew and sailed back to San Francisco.

Q All right. Now, are there any more—any new symbols on this overlay representative of maritime boardings?

A Yes, there are two additional ones. The most northerly of the symbols marking boardings. Those were in connection with the halibut fishery which was also carried on for many years in Cook Inlet by mostly, in the early years by steamers, small steamers of 100 to 200 tons that carried for the most part 12 to 16 dories. The actual fishing was done with dories, two-man dories. Some of the vessels that fished halibut in Cook Inlet in that manner were the Zapora and Chicago, the Zapora belonging to Booth Fisheries Company, [552] and the Chicago belonging to Booth Fisheries, and the New England, the steamer, belonging to New England Fish Company.

• • • •

[553] Q Would you proceed briefly with a description of the two symbols which you were discussing, Mr. DeArmond?

A One of them, and I am not sure which is which, one of the marks is the Zapora and one the Chicago, both of which were fishing halibut in Cook Inlet in 1924.

Q Was that the Chicago, or the New England?

A Or the New England and the Zapora, I'm sorry. One belonged to Booth Fisheries and the other one to New England Fish Company. And in June of that year, I believe I have a date in my notes, the fishery patrol vessel Kittiwake belonging to the United States Bureau of Fisheries, was proceeding from Chisik Island for Seldovia, according to her log a straight course, a log which I examined, when they came upon these two [554] halibut steamers, boarded them and found that they were

fishing without the permit that was required by an executive order establishing the southwest fisheries reserve.

• • • •

THE WITNESS: And the agent aboard the Bureau of Fisheries patrol vessel Kittiwake, a Mr. Scudder, ordered the captains of the two vessels to cease fishing until a permit was received.

BY MR. CRANSTON:

Q All right, and was a subsequent permit received, according to your research?

A I am not sure whether it was received or not. The Commissioner of Fisheries, a Mr. Henry O'Malley in Washington, D.C., sent a telegram to the agent directing that they issue a permit. I found a copy of the telegram. I don't know if one was issued or not.

Q All right. Now, let's go on to mining activities. Could you give a brief description of the mining activity in Cook Inlet?

A The earliest mining activity was coal mining by the Russians. The presence of Coal at Port Graham in the southern part of the inlet was reported, from the earliest known reports, was by Captain Nathaniel Portlock in 1786. Captain Portlock was [555] an English master of a vessel on a trading expedition. The Russians began using coal in the 1840's. They built the first steamship built on the Pacific coast at Sitka about 1840 and—well, they burned some wood. They also found it desirable to have coal and sent a mining engineer over to examine the area for coal. His name was Peter DeRoche. He examined and made a report on the coal prospects at English Bay or at Port Graham, and also did some gold exploring up in the Kenai River area. He spent two or three weeks with a crew of men up there and found some gold, but not enough to make it pay.

Subsequently, a man named Furuhjelm, who was brother of the Russian governor and was a mining engineer, came to Port Graham, put in the machinery and buildings, necessary appertinences for a coal mining operation. The ship carried some coal from California—to San Francisco, but by the time they got in operation, it was not profitable to ship to California. Other sources had been found closer to California, so they continued operating the Port Graham mine only for the use of the Russian steamers. By that time, the Russian-American had a fleet of five or six steamers going along the coast and secured the coal supply from the Port Graham mine. The mine closed down not too long before the transfer in 1867.

Q Let's take the activity, if you would, from 1900 relative to [556] mining with a brief discussion of each of the symbols, if you feel that is appropriate.

Q Well, starting a little earlier than 1900, there was coal mining on a commercial scale on the Homer side of Kachemak Bay. Some of that coal was also shipped to markets in the lower United States, to Washington and so forth. The principle operation there started in 1900, however, with the building of the railroad from the end of Homer Spit to a coal mine up in the upland area here. That mine and the one at Port Graham were both carried on until the building of the Alaska Railroad which supplied coal for the early stages of the Alaska Railroad, and the early city of Anchorage.

After the railroad reached the Matanuska Valley, well, coal became there of better quality and at a lower price.

Other symbols up this coast and over on the Turnagain Arm area indicate gold mining activity which started in the Resurrection River, the Six Mile River in the late 1890's which resulted in a considerable gold rush to Turnagain Arm, the founding of Hope and Sunrise in 1895 and 1896. Virtually all of those miners were carried to the site by small steamboats or sailing vessels at that time.

Q Was there any mining on the west side of the inlet?

A There was a couple of prospects at Iliamna that were carried on, development operations were carried on for a period of about 10 years, I think, not continuously,

but over that [557] length of time, but it did not ever become commercial property.

Q Now, going on to the oil well symbols, could you briefly describe what those represent?

A Well, Oil was first reported, traces of oil, signs of oil, in Russian days, in 1853 and the first oil location was filed about 1890 by a man named Edel F. Kenai over in the Iliamna Bay-Iniskin Bay area, and the drilling rig was—went ashore there sometime around 1900 and some drilling was done, not with any success. There was further oil drilling exploration in the Kenai area north of Kenai in the 1820. There was no—

Q Eighteen, or 1920's?

A Or 1920's, I'm sorry. Oil leasing, oil development was closed for about 10 years from 1910 to 1920 by a proclamation of the President. All oil operations were shutdown. Subsequently, there was off and on exploration at various points near Anchorage and up on the Knik Arm until the final discovery in 1957.

MR. CHARNEY: Objection; 1957, we object on the grounds this is hearsay. 1957, in our minds is not history.

THE COURT: Mr. Cranston?

MR. CRANSTON: Well, I believe that that could include his testimony. I feel that its' simply bringing to completion the oil development of the area to date.

THE COURT: Well, it's obviously, counsel, not history [558] as such. Objection is sustained to the last part of the answer.

MR. CRANSTON: If you would excuse me just a minute, your Honor.

Mr. DeArmond, if you could resume the stand now, please.

At this time, your Honor, I would move the admission into evidence of Exhibit HV.

THE COURT: Is there any objection?

MR. CHARNEY: If it is limited solely to illustrative of the testimony given by the witness, we have no objection.

MR. CRANSTON: Fine, your Honor.

THE COURT: It may then be received and marked.

(Defendant's Exhibit HV received in evidence.)

BY MR. CRANSTON:

Q Now, Mr. DeArmond, taking into consideration the testimony which you have given both last Friday and this morning, I would like to ask you a few more questions. First of all, Mr. DeArmond, do you have an opinion as to whether or not there has been a historical exercise of authority over Cook Inlet by those who claim dominion over the adjacent lands of Alaska?

MR. CHARNEY: I object to this as not within the expertise of a historian.

MR. CRANSTON: Your Honor, I have qualified Mr. DeArmond as a historian and the question is framed in terms of history. It [559] requests or seeks an answer from him based on history and as an expert, I feel that he is well qualified to render an opinion, recognizing, of course, that he may be cross examined by the Plaintiffs concerning that opinion.

THE COURT: Objection is overruled. You may answer. The answer would be just yes or no, whether you have formed an opinion.

THE WITNESS: Yes.

• • • •

A Yes, it is my opinion that there has been a historical occupation and dominion over this area by at least two countries, Russia and the United States, who had claims to it.

Q All right, do you have an opinion as to whether or not there [560] has been a historical continuity of such authorities as to have developed into a usage?

A Yes.

Q And what is your opinion?

• • • •

A I think I have the question. I think that there has been a continuity of this exercise and jurisdiction

that would establish a usage of the Cook Inlet area by these two claimants.

Q All right, Mr. DeArmond, do you have an opinion as to whether or not from a historical standpoint Cook Inlet has been vital to the interests of those who claimed dominion over the adjacent lands of Alaska?

A Yes.

Q And what is your opinion?

MR. CHARNEY: Same objection.

THE COURT: Overruled.

THE WITNESS: It is my opinion that Cook Inlet has been vital to the interests of the claimants and occupants of the adjacent land areas.

* * * *

[571] DONALD M. STEWART

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Mr. Stewart, where do you live, sir?

A Homer, Alaska.

Q How long have you lived in Alaska?

A Since 1965.

Q What is your present occupation?

A I am area management biologist for the Commercial Fisheries Division, Alaska Department of Fish and Game.

Q How long have you held that position, approximately?

A I have had the area biologist job for the past two years.

Q I am going to ask you some questions with regard to some opinions and with respect to some studies, and in that connection, Mr. Stewart, I want to go to your qualifications. And first, may I ask you to tell the Court what is your formal educational background?

A I have a bachelor of science degree from Oregon State University, with a major in fishery science.

Q Now, what has been your working background or experience in [572] dealing with fishing management? Would you outline in that regard for the Court the various positions you have held that had to do with fishery management?

A I started my career with the Department of Fish and Game in 1962 as a fisheries technician. Every salmon season from 1962 through 1965 I worked in the lower Cook Inlet area on pink salmon research. In 1966 I became a research biologist, permanent research biologist with the Department of Fish and Game in the Bristol Bay area, researching sockeye salmon. I worked in that position until 1968 and was promoted to an assistant area management biologist of Cook Inlet. I held that position until 1970 and was promoted to area management biologist that I hold now.

Q Is the field, the general field of fish management, recognized as a specialized field?

A Yes, it is.

Q And how many years in all have you dealt with that field?

A Since 1962, not counting my time at Oregon State University.

Q Can you outline for the Court, and do so, if you will, briefly the nature of the duties you presently have as area management—

A Well, basically, it is my responsibility to manage the fisheries resources of Cook Inlet on a maximum annual sustained basis. In doing this, we use statistics, research from our research sections, and we apply regulations to the fishery to achieve this goal.

[573] MR. PHILLIPS: Your Honor, we submit Mr. Stewart as an expert in the field of fishing management.

MR. BRADLEY: The United States has no objection, your Honor.

THE COURT: He may then be so qualified. You may proceed.

MR. PHILLIPS: Thank you, your Honor.

BY MR. PHILLIPS:

Q First, as to the Department of Fish and Game, could you tell us a bit about that department, its responsibilities, its make-up and where its offices are generally located?

A Well, our main administrative office, of course, is located in Juneau. Our regional office of which I work in is here in Anchorage, and the area field office is located in Homer.

Generally, the duties of my particular position is to manage this fishery on a maximum annual sustained yield, and in doing this, the major tool used is regulating the types of gear, the amount of gear and amount of fishing time allowed.

Q What various statistics does the department keep?

A Oh, various statistics. We compile catch statistics by date, by species of salmon. Also, shellfish. We use applied research and the statistics collected from that research, and in doing this. we establish these regulations that I have discussed for management.

Q Are these statistics kept on a regular basis?

[574] A Yes, they are.

Q Are they kept accurately?

A Yes.

Q Are they published?

A Yes, they are.

Q Are these statistics made available to the public, generally, upon request?

A Yes, they are.

Q In this case, Mr. Stewart, have you made those statistics available to a Dr. George Rogers, an economist?

A I have.

Q Now, at the request of the State of Alaska, have you made any compilation of streams in the Cook Inlet area?

A Yes, I have.

Q Could you tell us what kind of compilation you made?

A I compiled all anadromous or salmon streams [*sic*] entering the Cook Inlet area from the upper reaches of

Knik Arm south to a latitude of Cape Douglas and Gore Point. Three of these streams, the Kenai, Kasilof and Susitna Rivers, have many more tributaries than listed in the compilation. The compilation has totaled 131 streams in this area.

Q Was this compilation reduced to writing?

A Pardon?

Q Was the compilation reduced to writing?

A Yes, it was.

[575] MR. PHILLIPS: May I ask, your Honor, that the Clerk hand to this witness Exhibit IW.

BY MR. PHILLIPS:

Q Does that exhibit which, for the record, is labeled IW, represent the compilation that you made?

A Yes, it does.

Q How did you go about making the compilation? That is, to what sources and in what way did you make that compilation?

A The source used for the compilation was the catalogs of anadromous fish streams.

Q What are anadromous fish streams?

A Salmon streams. In this case, they were compiled by Mr. Gary Reynolds in 1968 for the Department of Fish and Game.

Q Was that compilation done accurately?

A Yes, it was.

MR. PHILLIPS: At this time we move the introduction of Exhibit IW, your Honor.

* * * *

[576] THE COURT: It may be marked.

(Defendant's Exhibit IW received in evidence.)

BY MR. PHILLIPS:

Q This compilation, Exhibit IW, does it show each of the salmon streams by name?

A Yes, it does.

Q I believe it is a stream system, is it not, sir?

A System, right.

Q What do you mean by a stream system?

A Well, it is the system actually entering Cook Inlet that salmon enter into for spawning purposes. However, there are [577] many, many tributaries to these systems entering the Cook Inlet area that salmon utilize for spawning.

Q Yes, and how many of these stream systems are shown in your compilation?

A One hundred thirty-one.

Q And opposite each such stream system, do you show the species of salmon that inhabit that particular system?

A Yes, we do.

Q And that, likewise, is shown on your compilation?

A Yes.

Q Mr. Stewart, are you familiar with the federal regulations; that is to say, the Fish and Wildlife Service regulations?

A Yes.

Q And more particularly, those that were in existence for Cook Inlet for the 10-year period prior to Alaska statehood?

A Yes.

Q Are you likewise familiar with the regulations put out by the State of Alaska since it gained statehood, and particularly with reference to Cook Inlet?

A Yes, I am.

Q In your capacity and position as an expert in the field of fishery management, do you have an opinion as to the reason or rationale for these fishing regulations?

A Yes, I do.

Q Could you tell the Court what that reason or rationale is?

[578] A Well, basically, the reason for the regulations in the Cook Inlet area is to maximize an annual harvest, a surplus harvest of the stocks entering Cook Inlet, and at the same time, assure adequate escapement for species of salmon or shellfish escaping the fishery or a seed or a spawning stock to perpetuate the different species.

• • • •

BY MR. PHILLIPS:

Q Assume for purposes of this question, Mr. Stewart, that there had been in existence no such fishing regulations as those contained in the Fish and Wildlife regulations during the 10-year period prior to Alaska Statehood. Do you have an [579] opinion, based upon your experience, as to what the effect would have been in the Cook Inlet area? This calls for a yes or no answer.

A Yes.

• • • •

[580] Q All right assume that the regulations that were in effect, mainly those of the Fish and Wildlife Service, had regulated the taking of fish only in those areas of water within three miles from the coastline. Do you have an opinion, based upon your experience and studies, as to what the impact on the resources of Cook Inlet would have been?

A Yes, I do.

Q Will you state that opinion?

A Yes. If we had not had regulations governing all of Cook Inlet waters, I feel the effect would have been disasterous upon salmon stocks of the inlet.

Q Now, will you explain that opinion, giving your reasons therefor?

A Well, there are probably three. First of all, there would have been no regulation on the type of gear allowed to be used, or fish species. Second of all, there would have been [581] no regulation on the amount of gear used, and thirdly, there would have been no control over the amount of fishing time. They would have been able to fish 24 hours a day, seven days a week. This would have been very detrimental to the stocks of Cook Inlet.

Q And what would this have done, if indeed anything, to those salmon going up or down those 131 stream systems?

A It would more than likely have depleted a lot of the races in specific streams of the systems we have mentioned.

MR. PHILLIPS: May the witness be shown, your Honor, Plaintiff's Exhibit 73, I believe it is?

May I see it just a moment, please?

BY MR. PHILLIPS:

Q Mr. Stewart, I am not sure that you have seen this exhibit before, and I will ask you first, have you seen it or not?

A No, I haven't.

Q Perhaps it would be in order for me to explain that this, as you see, is a map of Cook Inlet on which certain lines have been drawn. You see those lines?

A Yes, I do.

Q And I think it's a fair statement to say that that exhibit shows three lines, three different lines?

A Yes.

Q The first line, or the line closest to shore is a line that generally goes along the coastline. Do you see that line?

[582] A Yes, I do.

Q And then the next line is a line representing the three-mile limit. Do you see that line, sir?

A Yes, I do.

Q And the third line is a line that represents, as I understand it, the contiguous fishing zone. That is the innermost line. You see that, sir?

A Yes, I do.

Q Now, I want to direct your attention to that area of water which is within the last line that is—that is outside, but enclosed by the contiguous zone line. Do you see the area that I am pointing to?

A Yes, I do.

Q Now, having directed your attention to that area of water, I will ask you to tell the Court whether or not you have an opinion as to what would be the impact on the fishing resources of Cook Inlet if in that body of water there was no control of fishing and no regulations applicable to fishing. Do you have an opinion, sir?

A Yes, I do.

• • • •

[586]Q Directing your attention, Mr. Stewart, to the area of water enclosed by the innermost line on Exhibit 73, and assuming that that area of water and the fishing therein was not controlled either by the present Alaska regulations or that it had not been controlled prior to Alaska Statehood by the federal regulations under the White Act, what is your opinion as to the impact would have been with the absence of such regulations?

A Again, in my opinion, it would have had disasterous effects on the fishing resources of Cook Inlet.

Q And would your reasons have been the same as those you gave a [587] moment ago?

A Well, I am not sure I listed all of my reasoning.

Q I want you to list them all, Mr. Stewart, if you will.

Q First of all, in this area under consideration, we have five species of Pacific salmon moving through these waters that could be intercepted by a fleet or gear without any regulations or control at all. Secondly, at the present time in the Cook Inlet area we have more than enough gear. The gear is adequate to harvest the surplus of stocks available to the fishermen at this time.

Third, this area contains large stocks of king crab. Again, we would have no control over regulating this fishery. At the present time, again, we have more than adequate gear to harvest the surplus of king crab stocks in the Cook Inlet area. We would lose control of regulating the type of gear, the amount of gear and the amount of time allowed to fish.

As a seventh point, if a fishery was allowed to intercept salmon stocks in this area, we would be harvesting on a mixed stock of salmon farther away from the stream of origin or the home stream where these salmon spawn than we are now, which is undesirable from a management standpoint.

Again, going back to the basis for the regulations, it is to maintain a maximum harvest of the stock and at the same time assure a seeding or a spawn stock to perpetuate the species.

[588] Now, these points I have just made, I feel if this area was uncontrolled by regulation by this state such

as we have been doing now and as the basis of our scientific management, the effect could be disasterous to the stocks and have a very detrimental effect on the whole economy.

Q Could you give us any opinion as to how long under those circumstances the salmon stock would last?

MR. BRADLEY: Object, your Honor. Move to strike the "whole economy" portion of his response in that he is not qualified to give that kind of an answer.

THE COURT: It will be disregarded.

BY MR. PHILLIPS:

Q Okay.

A I don't think I could set a time that it would take to deplete these stocks, but again, in my opinion, it would be a very short time.

Q Yes, sir. Now, would your answer be the same, and would the same disasterous effect occur if instead of no regulations at all being applicable to this center part of the water, but the landing law was in effect?

A Again, in my opinion, the effects would be the same.

Q Yes, sir, notwithstanding the landing laws?

A Right.

Q Yes, sir. Now, when you made your compilation of the salmon systems or stream systems, were you also asked for purposes [589] of giving the facts to this Court to designate the other fisheries in Cook Inlet?

A Yes, I was.

Q Can you do so, using perhaps the Exhibit 73 you have before you?

A It would probably be better if I could use a chart that I see.

• • • •

BY MR. PHILLIPS:

Q I believe, sir, at the noon recess we had reached the point where I had asked you to designate or tell the Court the other areas in Cook Inlet where there are fisheries, and you were about to do that, as I recall, and needed a chart to do this?

A Yes.

MR. PHILLIPS: Your Honor, may I ask the witness to step [590] to the chart?

• • • •

Q You are familiar with this chart, are you, sir?

A Yes, I am.

Q Now, using the pointer, if you please, and if you find it convenient, would you point out to the Court where the other fisheries are in Cook Inlet, and tell the Court what they are?

A We have four other major fisheries in the inlet. There are shell fisheries and they all take place south of the latitude of Anchor Point. We have a tanner crab fishery, a dungeness crab fishery, a shrimp fishery, a king crab fishery. Now, the dungeness, tanner crab and shrimp fisheries take place in this area here (indicating).

Q Would you describe for the Court what area you are pointing to?

A This is the outer Kachemak Bay limits in the southern district of Cook Inlet. The king crab area is all of these waters through here (indicating), down and around the Barren Islands.

[591] Q And again, for the record, would you describe where on the chart you are pointing to to show the king crab?

A This would be the lower—what we call the lower Kamishak Management District, all of these waters in through here (indicating).

Q Is that almost entirely across Cook Inlet?

A Yes, it would take in the waters from Cape Douglas up to Point Gore here, including the Barrens. This area here (indicating).

• • • •

[596] GEORGE WILLIAM ROGERS

being first duly sworn upon oath, testified as follows:

• • • •

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q What is your profession or occupation, Dr. Rogers?

A I am an economist. At present, I am with the faculty of the University of Alaska.

Q I see. Where do you live, sir?

A I live in Juneau, Alaska.

Q How long have you lived in Alaska?

A Twenty-seven years, with two absences, one for two years, and one of one year.

Q Inasmuch as I am going to ask you about some surveys and studies that you have made, I want to go first to your [597] qualifications, if you please, and would you start, sir, by telling us your formal educational background?

A I have a bachelor's and master's degree in economics from the University of California at Berkley. I got the bachelor's in '42 and the master's in 1943. I have a Ph.D. from Harvard University in political economy which I got in 1950. I have been a visiting fellow at Clare College, Cambridge University, England, for one year. I have been a letter fellow at Harvard for two years, and I have been affiliated with the University of Alaska since 1960.

Q Yes, sir. And what is your present position with the University of Alaska?

A I am a research professor with the Institute of Social Economic and Government Research.

Q Do you belong to professional societies?

A Yes, I do, to the American Economic Association, the Regional Sciences Association, the American Academy for the Advancement of Science.

Q Have you authoried publications?

A Yes, I have. I have authored three major books in regional studies. Two of them have been in print and are still in print since the early 1960's, I will identify them if you wish, and are used as texts and references and readings in regional studies at a number of major universities in the United States.

[598] Q I don't want to prolong this. I am not familiar with these publications, of course. If any of them relate to the subject of the studies or the type of studies that you made, I would appreciate your naming them. Otherwise, we will pass them up.

A Yes, they do. They are analyses or attempts to set up the basis for analyzing regional economies using the Alaska economy as the basis of study. One is Alaskan Transition, The Southeast Region, which was published by Johns Hopkins Press in 1960, and a second printing in 1967. The second is the Future of Alaska, the Economic Consequence of Statehood, also Johns Hopkins Press, 1962, with a second printing in 1969. Both of these books were written under the auspices of Resources for the Future, Incorporated, under their regional studies program. A third book which was more recent in dealing with the petroleum impact on Alaska is Change in Alaska Petroleum, People in Politics, which was published jointly by the University of Washington Press and the University of Alaska. In addition, I have done a number of monographs under the auspices of the Institute of Social Economic and Government Research, and also for several of the states and federal agencies. I won't list those because they're rather voluminous, but they all deal with the matter of regional analyses, primarily.

In addition to my publications, I have also done special [599] consulting work both for the state and federal governments and for the Canadian Government. My books and studies have had quite a wide circulation in Canada and in foreign countries, and for example, in 1970 I was a special consultant to the Constitutional Review Section of the Privy Council of Canada on the matter of a study on regional dimensions of environmental management.

I have also been a member of advisory committees in Canada on northern transportation and research in general.

My work for the State of Alaska has been with the various planning agencies since statehood and with the Alaska Department of Labor.

Q Dr. Rogers, excuse me, I didn't mean to interrupt you. I want to get quickly and very briefly from you your employment background with particular reference to your specialty, and I suppose the way to do this perhaps most expeditiously is to ask you, sir, what areas of economics, if any, have you specialized in?

A I have specialized in, as I said, regional aspects of economics.

Q I will come back to that in a moment. Now, very briefly give the Court your employment background insofar as it relates to your field and specialty of economics.

A Right. The various consulting assignments I mentioned all relate to this, but my employment—formal employment before I was employed by the University of Alaska was primarily with [600] the United States Department of the Interior as an economist, and it was during this period that the Interior Department was attempting to set up regional programming and policy determinations on a regional basis. For a period of two years I served, in 1951 through '53, as chairman of the Alaska Field Committee of the Interior Department, for example. After that, I was with the Arctic Institute of North America from 1956 through 1960 as a staff social scientist, and it was during this period that I did much of my consulting work with various governmental agencies. And since 1960 I have been with the University of Alaska, primarily in research and most of the research much oriented to regional analyses.

Q Now, sir, if you will, define for the Court the specialty in which you have engaged which, as I understand it, is regional economics.

A That is correct, yes. It is simply a—it is a matter of looking at the geographic dimensions of economic change, breaking down your study from national entities or large political groups such as states to units that have a natural social economic cohesiveness or internal structure. Studying the operation of these smaller units internally, and as they relate to larger units. It is an attempt to get at—

Q Are there various areas, regions in Alaska other than the Cook Inlet region?

[601] A Yes.

Q I have—name some of those.

A The basic studies that I have made for the State were designed to divide the state into manageable research and management units of a size that had some meaning. The division that I set up with Dr. Richard Cooley of the University of California shortly after statehood, for example, is still in general use throughout the state by federal and state agencies. This divides Alaska into five major regions. Each of these regions can be studied separately. They're large enough, but they all have some tie together, and the importance of this is to get at an understanding of what causes change, and the way you get at this is to get down to where the change is occurring and then study how it spreads through a larger system.

MR. PHILLIPS: May it please the Court, we submit Dr. Rogers as an expert in the field of economic, and more particularly, in the field of regional economics.

MR. CHARNEY: No objection.

THE COURT: He may then be so qualified.

You may continue.

BY MR. PHILLIPS:

Q Dr. Rogers, at the request of the State of Alaska, have you made certain studies with regard to what we refer to as the Cook Inlet region or area?

A Yes, I have.

[602] Q Could you describe to the Court how you went about those studies, what sources you consulted and generally or specifically, shall I say, the time you have devoted to this subject?

A Yes, I will. The first step was to define geographically the area that I would be considering, and I took—this was determined by the interest of this case, the natural conditions and the availability of statistics as the most logical unit, the Kenai-Cook Inlet census district or election district.

Q What, sir?

A The Kenai-Cook Inlet census district or election district, the two are synonymous. This, roughly, covers

the drainage of the Kenai Peninsula and the opposite shore of the mainland into the Cook Inlet, itself.

* * * *

THE WITNESS: I have here a copy of the official census map which divides it and is identified on the map here. It starts [603] roughly up in the Aleutian Chain drainage here, excluding this cut across the inlet, right—oh, let's see, it is right at this point, and then it follows the drainage down the spine of the Kenai Peninsula and then straight across the Point Bishop, and then again—and then right across here (indicating).

BY MR. PHILLIPS:

Q Is that Point Bishop, or Cape Douglas?

A Cape Douglas, I'm sorry. I have got my mind—the description is contained in the census report and I have here this map that is the area I—

Q Does that area exclude Anchorage?

A Yes, it does. Anchorage is up here (indicating). It excludes Anchorage and it excludes the entire Turnagain Arm area.

Q Now, if you please, take your seat again, Dr. Rogers. Are you telling us that statistics are available for this region which you have just described?

A Yes, they are. This, as I say, has been a census district since the 1960 census. Early census reports, it is possible to compile the data from recording districts which make up or did make up the area covered by their larger census districts.

Q All right. Now, having identified the area which you have just done, how did you then go about making your studies?

A Well, then the next step was to gather all available statistics on population, employment, income, production, value of [604] commodities and so on that related to this particular geographic area.

Q Now, where did you get that data?

A This—I got the population data from census reports and from the annual estimates of population, and components of change made by the Alaska Department of Labor, and from the vital statistics division of the Alaska

Department of Health and Welfare. The employment data I got directly from published reports of the Alaska Department of Labor on work forces, total work forces, estimates by area, by industry, by month, for the years 1961 through 1970. I also got data from their statistical quarterlies which have more detailed breakdowns.

Incidentally, these data are available on exactly the unit I described, the Kenai-Cook Inlet unit. There is no question of adopting the data to the statistical area.

The fisheries employment data I worked up from records in the Juneau office in which I had clerks take it from the fishing tickets, the year's fishing in the areas of Cook Inlet for the key week which was the week with the 12th day of each month. This was to avoid duplication or double count of people and is the method used by the Department of Labor in other estimates. And from these years I was able to then estimate comercial fishing employment, so that the sources of information were the Alaska Department of Labor and the Alaska [605] Department of Fish and Game.

Now, on income data, by principle sources were the U.S. Department of Commerce, a survey of the current business, which puts out for each state of the union estimates of personal income received by residents, by industrial source, for each year. I also got further information from the Alaska Department of Labor, payroll data by industrial classification for this particular area, and from the Department of Fish and Game the value of the catch of fish to fishermen operating in the area.

These were the principle sources of income data. Value of product were primarily from published reports of the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and with some additional information from the U.S. Department of Commerce, Alaska Department of Labor as regards definite expenditures and employment.

There were several other sources, but these were my primary sources.

Q Are those recognized sources?

A Yes, they are. The data are generated just for this type of purpose.

Q Now, from this data were you able to arrive at any conclusions as to the nature of this region and the various economic principles and bases upon which it exists?

A Yes, I have. I did develop very detailed analyses which are [606] an attempt to put together a model of the economy, primarily during the 1960's, but generalizations that can be drawn from these I think are quite obvious.

Q And then I want to come to that.

A Okay, fine.

Q I want you to describe for the Court, if you can, the economic characteristics or principle characteristics of the Cook Inlet region.

* * * *

[607] THE WITNESS: Now, the characteristics of the Cook Inlet region, my analysis was primarily for the decade of the 1960's. However, in preparation I did study the production figures, populations figures going back as far as the record extended, and from this and other sources I have formed an opinion or judgment as to the nature of the trends in the economy leading up to the present nature of the economy.

The basis of the Cook Inlet economy has been primarily fishing and the processing of fish since the American occupation. Prior to that, it was, of course, the source of subsistence for the aboriginal peoples. The processing of fish continued and continues to the present day as a sustained operation. The population supported by these activities more or less stabilized at around 2,000 persons from about 1920 on until 1950, then it took a sudden jump up to 6,000 and 14,000, and this was because of the introduction of the further elements into the local basic economy.

The first was definitely the construction of two major bases or stations, rather, and the manning of stations during the 1950's, and then their phasing out during the sixties. The construction of a highway system.

The second and most dramatic was the discovery of oil on the Kenai Peninsula and the exploration and development of oil fields in the upper Cook Inlet and on the Kenai Peninsula culminating in the establishment of an industrial complex which includes [608] petroleum refining, natural gas liquification and the manufacture of ammonia and other products of this nature. The economy during the 1960's, during the first part of the 1960's was still dominantly fishing. Mining was a minor occupation. By mining, I include, of course, oil and gas exploration and development. And then by the mid-sixties the mining development activities had exceeded and then far exceeded the employment offered by fishing; however, since the last two years of the decade there has been a downturn in these activities which was natural because the fields—

BY MR. PHILLIPS:

Q Downturn of what activities?

A The activities of petroleum-related activities. This reflected the shifting from exploration development phase into the production phase, and the prospect is that this downturn will continue.

Paralleling this has been a similar rise and fall in construction, most of it associated with the petroleum development, so during the sixties you have had several things in effect, one is the continuation of fish processing and fishing as a major activity with an upturn toward the end of the decade, which reflected diversification of fisheries and diversification of fish products, the movement more into canning and processing of crab and shrimp and clams.

Then, another element has been the decline in defense activities in the region, and the third has been the rapid [609] expansion and the beginning of the decline in mining and construction going together. These present the underlying forces of the Cook Inlet economy at present.

* * * *

[610] Q My question that I started to ask you, Dr. Rogers, was this: Do economists, and in this case, you as an economist, engage in research that enables you to know which industries have more stability or less stability than other industries?

A Yes, this is really the essence of any economic research, and to develop a regional analysis.

Q And why is stability or the lack of stability important to an area?

A Well, on this set you build continuity that you build your structure, your community. The movement of workers in for a year or a year and a half does not build stability. It does for a period interject income into the local economy which may then generate further income, but it does not result in any continuous growth of a society or a community. And this is the other side of an economy. It's for the purpose of sustaining a group of people in a particular area.

[611] Q Dr. Rogers, at our request have you had prepared this morning some graphs or charts by which you tied together your statistics and your studies?

A Yes, I have this, the aspect that we were just mentioning.

MR. PHILLIPS: Your Honor, may we have the easel and have those up here, or whatever the Court's pleasure. I suppose it makes no difference. Would this be all right?

* * * *

Q Let's move these a little closer, if we can, sir, so Mr. Charney and the Court both can see them. Now, how many charts—how many charts did you have prepared, Dr. Rogers?

A Let's see, I believe there were three charts prepared.

Q And for the record, those are identified as IY, IZ and JA.

Now, first a few questions about these charts, Dr. Rogers. Were these charts, the three here so identified, prepared under your supervision?

A Yes, they certainly were, this morning.

[612] Q And by whom were they prepared?

A By a draftsman in the Division of Land, Paul Simonian. I would have to have someone spell his name.

Q I don't think that's too material. Did he work at your instructions?

A Yes, he worked at my instructions, from my tables.

Q And are all three of these charts prepared on the basis of data which you researched and which you furnished to this draftsman?

A That is correct, yes.

Q Have you had occasion to examine these charts?

A Right now, yes. I mean yes, I have.

Q Well, have you had occasion to examine them with such expedition or such thoroughness, and if you haven't, I want you to do so to enable you to tell the Court whether or not these charts are accurate.

A Yes, they are—I have been checking out the figures here, and they are accurate. I haven't this one. I must point out the draftsman took some liberties with the scale here, because this—

Q This one being—

A —and I should explain that he had done this before I caught him. This, you see, this is the number of people employed. It jumps from 600 to 1,200, but only two industrial classifications jump up there. One is mining and one is [613] construction. In order to get it on the card, he compressed the scale here so these points should actually be up here some place, but the major part of the economy during the 1960's is embraced within the accurate scale range here. That is the only point—objection I had to the drafting, which I don't believe distorts the exhibit.

Q Yes.

A Other than that, it's accurate.

Q Are these charts accurate and based upon the data you supplied?

A Right.

MR. PHILLIPS: We move their admission, your Honor. They are Exhibits IY, IZ and JA.

* * * *

THE COURT: Well, with that assurance, the objection is [614] overruled. They may be then received in evidence.

(Defendant's Exhibits IY, IZ and JA received in evidence.)

BY MR. PHILLIPS:

Q Now, turn this around just a little bit. I don't want to get my back to my friend over here, Dr. Rogers. Let's look first at the chart which has been identified as IY. Will you explain to the Court what is depicted on that chart?

A Yes, I will. This top line represents the population, total population of the Kenai-Cook Inlet area as drawn from official United States census reports as of 1939 through 1960. From 1960 to '70 on the estimates of annual population by the Department of Labor. The bottom line represents the total population of the region either employed in fisheries or fish processing, employed in secondary employment related to those. The unemployed work force normally affiliated with fishing, fish processing, and the dependents of this work force, this is a figure generated from a study of the relation of employment to population and employment to various other industrial classifications of employment. The rest of it, of course, is other activities which represent what I spoke about earlier, the impact of defense federal spending and petroleum and construction on the population now of the region. As I say, this represents not only the people gainfully employed, but unemployed in the region and the dependents [615] of the members of the work force. Shall I go on to the—or do you want to—

Q I am not quite sure, Dr. Rogers, that I understand the significance of this first chart.

A This is simply to relate the population of the region to the basic economy of the region. This is the part that is oriented to the fisheries. This is the part that is oriented to other activities in the region (indicating).

Q So that this really just is a starter?

A That's right, sir.

Q So, that leads you, does it not, to the next chart which is identified, for the record, as IZ?

A Yes, sir.

Q And would you explain to the Court what that chart depicts?

A This chart depicts each of what represents the basic parts of the economy. It is employment in these indus-

tries that are the reason for all other employment, federal employment in this case, primarily defense, fish and food products, mining, which is in this case is primarily oil and gas. I might explain oil and gas is not split up because there is a small amount of hard rock and other mining in the area which for purposes of avoiding disclosure have been lumped in with oil and gas, construction—contract construction and other manufacturing other than food processing. On this scale this represents the yearly average employment and the plotting here [616] represents the yearly average employment in each of the industries for these years.

Q Now, what does this chart indicate, if indeed it shows anything with respect to the stability of these various activities?

A Well, the red line is the fish and food processing which is primarily the processing of the seafood. Notice it starts up here close to 500. This is an average figure. The seasonal peak is, of course, about three times this. It drops in the mid-sixties and then climbs up rather sharply toward the end.

The blue line is federal employment, as I said earlier, it is primarily defense, represents the movements of military personnel into the region, their withdrawal, their movements back and withdrawal again.

The black line is mining starting about 50 persons per month average, and running up to almost 1,200 in this peak. Bear in mind that the scale here has been distorted to get this on the chart. Construction is the dotted line which parallels very closely the employment in mining. By the end of the decade, the employment in mining dropped down to approximately the level of fishing from the peak up here (indicating), and of course, construction had dropped, well, down to about 300, a little more than 300 per month by the end of the decade.

[617] The yellow line represents other manufacturing, starts out very, very small amount of other manufacturing, but I don't have the data on which to consider such things as bakeries, print shops and so on. Then, when it gets to about 1967, it starts climbing and levels off. This

represents the point at which employment in other chemical processing came into the region. Notice the leveling off here (indicating).

Q Does this chart, in your judgment, show the importance of fishing to the Cook Inlet region?

A It shows the importance of the fishing to the Cook Inlet in terms of maintaining stability and maintaining an economy—

Q Yes.

A —as contrasted with the very sharp boom of the other newcomers.

Q I notice this starts in 1960 and ends, presumably, in 1970. Why doesn't it include 1971 figures?

A The reason for my exclusion of '71 is that I could not get complete data. I did have six months in most cases, but the indications are that this has dropped down roughly 10 per cent to roughly 500.

Q In '71?

A In '71, yes, and construction has dropped a little further. This has leveled off. It is probably about at this point (indicating).

Q This is what?

[618] A The blue line, federal—I'm sorry—and the other manufacturing both have leveled off, and I don't have data on the fish processing and fisheries yet for '71.

Q That brings us, then, to the last chart, does it now, which is JA?

A Correct.

Q And what do you attempt to show on this chart?

A This is the personal income received by residents in the region by basic economic orientation. Now, the reason for doing this is that I want to get the impact of these activities again on the region. The value of fisheries products, for example, is considerably in excess of the figure I show here as the value of crude petroleum and natural gas which runs to about a quarter of a million dollars right now, which would put it way up here some place, but most of that value goes outside in the form of profits and payments for equipment and supplies, nonresident workers. Then, the rest of this, as I say, represents the income retained or escalated within the region,

and which reflects the income generated at a regional level.

The resources in the region, as I say, generate a great deal more value, but what we're interested in here is the economy and its continuation. The fisheries figure represents the amount of money paid to resident fishermen and to resident workers in the fish processing plants, and with some additional [619] money represented by supplies purchased by fishing vessels and by the canneries and processing plants. The level has been very level with a slight rise toward the end. It's about $7 million by 1970.

The other sources of income represent the incomes that are generated by construction, primarily, and by petroleum activities and these rose from—the reason I have this dotted line between 1960 and '64 is I did not find the basis for generating the figures in this intervening period. I did have a basis for '60 and '64 on, but in 1960 all other activity generated $5.2 million worth of personal income within the region as compared to $3.4 million in fisheries and this is a cumulative total we are looking at, the volumes here. This has risen very sharply.

Other activities at the peak were added to the economy, $63 million in 1968, and this has now dropped off to about $40 million in 1970, and the indications are that it's dropping further.

Q During 1971?

A That's right.

Q Now, I want to direct your attention to the orange line which represents fishing and fish products and which indicates, as I understand it, at the year 1970 some $7 million of value.

A Yes.

[620] Q Now, explain what all of that $7 million includes.

A This includes the amounts paid to fishermen for the fish caught. It represents the wages paid to people working in processing plants. It represents the supplies and services purchased locally by the industry. That is it, basically.

Q Does it represent the value of the canned—

A It does not represent the value of the canned salmon or frozen salmon.

Q Yes.

A The value, the difference between this and that value would represent the value that goes outside in the form or [*sic*] profits and, of course, supplies that are imported into the region are not generated within the region.

Q Yes. Does this, then, this chart, JA, generally reflect and substantiate your opinion as to the importance of the fishing industry to Cook Inlet?

A Yes, as a continuing stable element within the industry of considerable significance with some indication of growth.

Q Yes. Excuse me a moment.

One other question Mr. Cranston called my attention to, and I think we can—looking at this U.S. Geodetic Chart 8502. Now, was it possible to draw any conclusions as to how this activity and wealth were divided between the areas north of the southern point of Kalgin Island and the area south of Kalgin Island to Cape Elizabeth and a line across [621] to Cape Douglas?

A Well, it was not possible for me to get good data on the processing, because there is at this point a commingling of runs.

Q At this point, you are referring to—

A I am referring to almost as though you drew two parallel lines at the southern and northern parts of Kalgin Island. This appeared to be one of the major areas of production. The reason I am hedging is that the data also hedged because the fishermen may be operating on both sides of the line or the fish that are spawning below the line may be caught above the line, depending on the tides and winds. These are things that I have no experience on, but I do know they occur within a fishery. However, I did get it for the period '60 to '65, but I haven't been able to find in the process list indications of the degree of the number of fishermen active below this line and above.

Q Above the south line?

A Above the south line, right. This indicates that for the period '65 to '70 the percentage of fishermen employed

or engaged in fishing in the Cook Inlet anywhere between 70 and 80 percent were active below this line.

Q Below Kalgin Island?

A Right. Now, the figures that I collected were the most recent, the ones that the data was available for, and [622] represent the period in which the shellfish activities were at their peak, of course, and I do not have data beyond this. This is one reason I did not prepare an exhibit on this, but the indication is that the bulk of the fishing since the mid-sixties has been below the line.

* * * *

[636] KENNETH ROBERT MIDDLETON

being first duly sworn upon oath, testified as follows:

* * * *

[637] DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Middleton?

A 3134 Knik Avenue, Anchorage.

Q What is your present occupation?

A Regional supervisor for the Division of Commercial Fisheries, Alaska Department of Fish and Game.

Q How long have you been employed by the Alaska Department of Fish and Game?

A Since 1960.

Q And what have your duties been, generally?

A My duties have varied all the way from assistant area biologist when I first started with the area, assistant area biologist, then area biologist and assistant area supervisor for the Bristol Bay area, then manager of the central region.

Q That is what you are now?

A Yes.

Q Is the Cook Inlet district contained within the central region?

A Yes, it is.

Q Would you describe briefly what your responsibilities and duties are as regional supervisor?

A Oh, my duties are to administer and see that the regulations are adhered to, enforced throughout the region, as well as the fishery management and research programs under my [638] jurisdiction.

Q And in this connection, is it necessary for you to know the geographical area over which you have authority in Cook Inlet?

A Yes, it is.

Q And upon what do you rely in making this determination?

A Our base reference is the Alaska Fish and Game regulations.

Q All right, could you—

MR. CRANSTON: Mr. Clerk, I wonder if we could hand the witness Exhibit IX, please.

BY MR. CRANSTON:

Q That is a copy of a pamphlet containing the Alaska Department of Fish and Game regulations.

Mr. Middleton, you said you relied on the regulations. Could you refer to Exhibit IX which has been placed in front of you and tell me which regulations you refer to when you answered my question?

A Okay, if you will give me a moment here to locate myself, I can do that. Is it your wish that I read the regulation?

Q Would you tell me which regulations you are referring to?

A Yes, this is Article 155, A.A.C., 21.100, "Description of Area."

Q Yes. Would you read that, please?

A "The Cook Inlet-Resurrection Bay Area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren [639] Islands."

Q All right, have you relied on any other regulations to determine the geographical area over which you have authority?

A No, no, these are the regulations that dictate our area of jurisdiction.

Q Have you ever considered—do you give any consideration to any regulations in Chapter 39?

A Yes, yes.

Q All right.

A This—you are referring specifically to waters of Alaska, I believe, under "General Definition"?

Q Well, is that a regulation upon which you rely in order to make your determination?

A Yes.

Q All right, would you find it in the regulations and tell me what you are referring to?

A Yes. The regulation defining the waters of Alaska is 5 A.C. 39.975 (13).

Q Would you read that, please?

A "Waters of Alaska means the waters north and west of the international boundary at Dixon Entrance, including those extending three miles seaward, A, from the coast, B, from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances, C, from an island or group of islands, including the islands of the [640] Alexander and between the groups of islands and the mainland.

Q All right, you have referred to two regulations. Are there any others upon which you rely?

A Yes, the definition of international waters.

Q And where is that found in the regulations?

A I believe that is Section 36. If you will give a moment here—

MR. BRADLEY: Would you give the page when you find these sections?

THE WITNESS: Oh, okay. Well, I can do that simpler. I have got the pages here, 5 A.C. 21.100 is page 5-67. Waters of Alaska can be found as 5 A.C. 39.975 13. I just cited page 5-113. International Waters. This is 5 A.A.C. 36.010, Description of area. The international water area includes all waters outside Alaska's three-

mile limit. That is, beyond those described in 5 A.A.C. 39.975 13, which did describe the waters of Alaska.

BY MR. CRANSTON:

Q All right. Now, over what geographical area in Cook Inlet have you determined that you exercise authority?

A Over those, as I stated, that describe the waters of Alaska.

Q And with respect to Cook Inlet, what portion does that include?

A Well, that is the waters north of Cape Douglas and extending to Cape Fairfield, and including the Barren Islands.

Q Do you administer the Alaska Fish and Game regulations with respect to commercial fishing with respect to residents and [641] non-residents of Alaska within the area you have just described?

A Yes.

Q And could you give some examples of the type of regulations which you administer within that area?

A The basic regulations that we are responsible to administer concern fishing seasons, weekly fishing periods, type and length of gear, closed waters, open waters. There are numerous other miscellaneous regulations. These are the basic ones.

Q Could you give an example of closed waters?

A Well, there—yes, we have closed waters at the mouth of streams, waters are closed a mile from the terminous of the mouth of each salmon stream.

Q Are there any areas in which specific types of salmon gear are prohibited?

A Yes. We prohibit certain types of gear in certain areas.

Q In the southern area of Cook Inlet are there any examples of this?

A Yes. The southern district of Cook Inlet, the allowable gear is hand purse seine and set net. Drift gill net gear is prohibited in that area.

Q What area are you talking about?

A I am talking about the area below the latitude of Anchor Point.

Q Now, are there any areas defined by the Alaska Department of Fish and Game regulations where, in connection with your duties, [642] you apply the regulations only to residents of Alaska?

A Yes, in the case of international waters, the residents of the state are prohibited from fishing salmon net gear or long line gear in international waters.

Q And that is the area you just earlier defined?

A That I cited as describing international waters in the regulations, correct.

• • • •

[643] Q Can you tell me, Mr. Middleton, how many sets of the Alaska Department of Fish and Game regulations have been published since statehood?

A The annual publication rate is 10 to 15 thousand. Now, therefore, I would deduce that approximately 100 to 150 thousand regulations have been printed and distributed by the Department since 1960.

Q And have those regulations been distributed?

A Have they been distributed?

Q Yes.

A Yes.

Q To whom have they been?

A Well, to quite a number of federal and foreign agencies. Do you wish me to cite specifically those that I am aware of?

Q Well, can you tell me those instances of which you are personally aware?

A Yes. The Bureau of Commercial Fisheries—ex-Bureau of Commercial Fisheries in Washington, and also the regional office in Juneau. The Bureau of Land Management and Bureau of Indian Affairs. Canadian Department of Fisheries, quite a various multitude of governmental agencies and foreign countries upon request, oftentimes from foreign countries.

Q Have you, yourself, personally delivered copies of these regulations to representatives of foreign countries?

[644] A Yes, I have.

Q And to what countries?

A Japan and Canada, both.

Q And is this in connection with your official duties?

A Yes, it is.

Q Were these representatives to whom you delivered the regulations fishery officials of those countries?

A Yes, both fishery officials and industry personnel from the fisheries industry.

Q And do you do this about how often? Is this yearly occurrence, or—

A Yes, usually yearly, there are some requests. Most of my contacts are personal contacts, people that come through my office, or if I happen to be out of the country into Canada or Japan, which I am upon occasion, why, this can be on perhaps a half a dozen times, perhaps a dozen exchanges in one year.

Q Now, have any protests or criticisms been made from any foreign countries concerning the administration by the Alaska Department of Fish and Game regulations through the area of Cook Inlet which you describe?

A No, not to my knowledge.

Q Has any such criticism been made by the United States Government?

A Not that I am aware of.

* * * *

[660] FRANK M. DeROSSITT

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. DeRossitt—

THE COURT: Just a moment. How do you spell your last [661] name?

THE WITNESS: D-e-R-o-s-s-i-t-t.

THE COURT: All right, now, counsel.

BY MR. CRANSTON:

Q Mr. DeRossitt, what is your address?

A 2434 Albany Street, Eureka, California.

Q And what is your occupation?

A Part-time fisherman and longshore stevedore foreman.

Q Have you ever fished in the waters of Cook Inlet?

A Yes.

Q All right, and when has that been?

A I believe I began in 1952 and have fished every year.

Q Now, Mr. DeRossitt, I would like to direct your attention to a time on or about July 6, 1970, and ask you if you recall any incident at that time involving the Alaska Department of Fish and Game?

A Yes, I—

Q All right, would you tell me what that incident was?

A On about that time I was fishing in the—more or less the central part of the lower Cook Inlet off of Anchor Point, and an airplane flew over me repeatedly, and I could assume—more or less know that they were fish protection officers from the Department of Alaska Fish and Game. And they were waving at me negatively, and I decided I must be getting down too far, down about near the deadline, so I picked up [662] and moved out of that area.

Q Mr. DeRossitt, how far from the shoreline were you located?

A I would estimate about 15 miles from the west bank of Chinitna.

Q All right, Mr. DeRossitt—

MR. CRANSTON: Your Honor, I wonder if Mr. DeRossitt might approach the blackboard in order to refer to the chart?

* * * *

Q Now, Mr. DeRossitt, you are looking at U.S. Coast and Geodetic Survey Chart 8502, the 17th edition, July

19, 1971, and I wonder if at this time you would take my black pen and mark on this chart the location where you were at the time the event you have described took place.

THE COURT: Counsel, I can't—all right.

THE WITNESS: Could I find it and then—

THE COURT: Find it and then step aside before you make the marking.

THE WITNESS: —because I don't see it here. It's been a few years ago. I would say about in this area (indicating). Shall I make a mark?

BY MR. CRANSTON:

Q Yes, please. All right. Now, Mr. DeRossitt, you may step— [663] would you point for the Court to where you made your mark?

THE COURT: All right, I see.

BY MR. CRANSTON:

Q That is about at the location of the letter I in the word inlet. All right, Mr. DeRossitt, you may resume the stand.

Mr. DeRossitt, after the plane flew over you, what did you do?

A I picked up the gear and proceeded to Snug Harbor on the west shore above Chinitna Bay to anchorage.

Q Now, subsequent to the time that you have described, did you—did any other incident occur with you involving the Alaska Department of Fish and Game?

A On this day?

Q Or at any time—

A No.

Q —thereafter?

A Oh, later?

Q Yes.

A I don't know for sure just how many days, three or four days later, a few days later when I came into Kenai River, entered the river and came into our docks at the Columbia-Ward Fishery docks on the Kenai River, there was a patrol boat there with two officers, one of the officers from the State—Alaska State Fish and Game,

Mr. Nutgrass, and he gave me a citation for fishing in the lower area of Cook Inlet below the deadline.

[664] MR. CRANSTON: All right. Now, I wonder, your Honor, if the exhibit which was just marked, Exhibit JB, might be handed to the witness?

THE COURT: JB for identification may be handed to the witness.

BY MR. CRANSTON:

Q Mr. DeRossitt, you have been handed Exhibit JB, and I would ask you to turn to the last page of that exhibit. Now, can you identify what that document is?

A This is a citation that I received at that time, with my signature.

Q All right, upon receiving the citation, or thereafter, what did you do with respect to the matter?

A I called—I discussed it, of course, with several of the other fellows that had received citations and we talked to the cannery superintendent, and we called a lawyer in Anchorage and proceeded to oppose the case, set up our defense in the case.

Q All right. Now, I would ask you to turn to the next to last page of the exhibit which you have been handed and ask you if you recognize what appears there?

A Yes.

Q And what is that?

A I think they gave me this when I came over to the court.

Q And this is entitled "Complaint," is that correct?

[665] A Yes, Complaint, at the time I came over there.

Q All right, would you read that portion of the Complaint, Mr. DeRossitt, which commences at where it states "Complaint" right under the first black line?

A Where it says "did unlawfully"?

Q Yes.

A "Frank M. DeRossitt did unlawfully fish commercially with a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing."

Q All right. Now, Mr. DeRossitt, at the time this event took place, and all of the events which you have described, were you a resident of the State of Alaska?

A No.

Q Of what state were you a resident?

A During this time?

Q Yes.

A California.

Q All right, and did you have a commercial fishing license?

A Yes.

Q And what type of license was that?

A Drift gill net.

Q And was it a non-resident license?

A Non-resident license.

Q Now, Mr. DeRossitt, what was the disposition of this case?

A Well, we went to court with our lawyer and she studied the [666] laws pertaining to this particular area, and she said, "I think there was a flaw here in the wording," so when we went in before the judge and the prosecutor, we sat around and they discussed this point and it was pointed out to them that it was a misprint and there could be no such—the wording was wrong, it should have been "at" and it said "to" or something. It was merely one word worded wrong there, and the judge dismissed the case.

Q All right.

MR. CRANSTON: At this time, your Honor, I would move the admission into evidence of Exhibit JB.

THE COURT: Is there any objection?

MR. BRADLEY: Only that it's irrelevant, your Honor.

THE COURT: Well, it will be overruled and it may be marked into evidence as JB.

(Defendant's Exhibit JB received in evidence.)

MR. CRANSTON: And also, if the Court please, I would like to have the chart upon which Mr. DeRossitt made his mark given an exhibit number for identification at this time.

THE COURT: JC, for identification.

MR. CRANSTON: And I will offer Exhibit JC in evidence at this time.

THE COURT: Is there an objection?

MR. BRADLEY: No objection, your Honor.

[667] THE COURT: It may then be marked.

(Defendant's Exhibit JC marked for identification and received in evidence.)

MR. CRANSTON: I have no further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. DeRossitt, when did you begin fishing in Cook Inlet?

A I believe it was 1952.

Q Did you participate in a drift gill net fishery at that time?

A Yes.

Q Do you know when that fishery began in Cook Inlet?

A I'm not sure. I talked to the old-timers at that time and they told me that they had been fishing for years, drifting, but not extensively. It seems as though the opinion was that it began really heavily around 1947.

Q In 1947, this is when it began heavily below Kalgin Island?

A The big heavy fishery had started.

Q Now, did you own your own boat in 1970?

A No, I had a leased boat.

Q And who was that boat leased from?

A From Columbia-Ward Fisheries.

Q Where is that fishery company located?

A The office of the branch is Kenai.

[668] Q And was the boat docked there?

A Yes.

Q Was it docked there for the year?

A Yes.
Q Where did you first receive your citation?
A At the docks at Kenai cannery, the Columbia-Ward Cannery.
Q And how long was it from the time you saw the airplane until the time you received the citation?
A I don't remember exactly, but it must have been at least three or four days, because I don't think I came in. I stayed in Snug Harbor and went back out fishing, and when I came in, they were there waiting for me.

• • • •

KJARTON J. ASK

being first duly sworn upon oath, testified as follows:

• • • •

[669] DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Ask, what is your address?
A 4115 Baker Avenue N.W., Seattle, Washington.
Q And what is your occupation?
A Commercial fisherman.
Q And have you ever fished in Cook Inlet, Alaska?
A Yes, I have.
Q And when did you begin doing this?
A 1962, I believe it was.
Q All right. Now, Mr. Ask, I would like to direct your attention to on or about July 6th of 1970 and ask you if you recall an incident involving the Alaska Department of Fish and Game?
A Yes, I was fishing in Cook Inlet, lower Cook Inlet area, and a plane flew over while I was fishing.
Q All right, and will you describe what took place, please?
A The people in the plane, they motioned to me to pick up my net, as far as I could see.
Q And at the time this took place, how far from the shore were [670] you?

A I would say approximately 15 miles.
MR. CRANSTON: All right, your Honor, I would ask that Mr. Ask be permitted to approach the blackboard.
THE COURT: All right, would you step down to the chart that is right over here?

BY MR. CRANSTON:

Q Now, Mr. Ask, would you please indicate with the black pen which I am going to give you as best you can the location in the inlet where you were at the time the incident you described took place?
A Right in this area (indicating).
Q Now, would you step back and point to the Court the place on the map that you have marked your line? All right, thank you.
MR. CRANSTON: The record will indicate that there is a line extending northward from the letter I in the words "Cook Inlet."

BY MR. CRANSTON:

Q All right, Mr. Ask, you may resume the stand.
MR. CRANSTON: At this time I would request that this chart be marked for identification as Defendant's Exhibit next in order.
THE COURT: JD, for identification.
MR. CRANSTON: And I will offer Exhibit JD in evidence [671] at this time.
THE COURT: Is there any objection?
MR. BRADLEY: No objection, your Honor.
THE COURT: You may then mark it, Mr. Clerk.

(Defendant's Exhibit JD marked for identification and received in evidence.)

MR. CRANSTON: I would hand the Clerk a Xeroxed copy of a document entitled "Case Report" from the Alaska Department of Fish and Game, in the matter of Kjarton J. Ask, and ask that that be marked.
THE COURT: JE, for identification.

(Defendant's Exhibit JE marked for identification.)

BY MR. CRANSTON:

Q Now, Mr. Ask, what did you do then after the airplane flew over you?

A I picked up the nets and I ran northward.

Q And where did you go?

A At that time I ran further north and I continued fishing some more.

Q I see. All right, at any time after that point, or that incident, did you come across any officials of the Alaska Department of Fish and Game?

A Yes, I did, in Kenai River.

[672] Q And how many days after was that?

A It was maybe four or five days, three, four, five.

Q All right, Mr. Ask, would you examine Exhibit JE which has been handed you, I believe, and I would ask you to turn to the last page of that exhibit and ask you if you can recognize the document on that page?

A I do.

Q And what is that?

A It is a citation that Mr. Nutgrass issued me—

Q All right.

A —in Kenai River.

Q All right. Now, would you turn to the next to the last page on that exhibit and I will ask you if you recognize the document which appears on that page?

A Yes, I do.

Q And what is that?

A That is the Complaint.

Q All right. Now, would you please read for the benefit of the Court the language in the Complaint commencing at the fourth line where your name appears?

A "Fishing commercially with a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing."

Q All right, Mr. Ask, at the time these events took place, which you have described, of what state were you a resident?

[673] A State of Washington.

Q And what type of license did you have at that time?

A A commercial fishing license.

Q All right, was this a resident, or non-resident—

A Non-resident.

Q Now, then, did you go to court?

A Yes.

Q And what took place at court?

A It was dismissed.

Q All right, do you know why it was dismissed?

A There was a misprint in the fishing regulations.

Q All right, do you know what that misprint was?

A Yeah, it was one word that should have been in the regulations, it was at, a-t, and it should have been to, t-o.

MR. CRANSTON: I have no further questions.

THE COURT: Cross?

MR. CRANSTON: Your Honor, at this point—excuse me—I would move, or I would offer Exhibit JE in evidence at this time.

THE COURT: Is there an objection?

MR. BRADLEY: Your Honor, the United States objects to the relevance of the document, the situation, a citation that was given at the dock on the Kenai River, and it was evidently dismissed, to the issues in this case.

THE COURT: It will be overruled and received. I will view the exhibit—all of the exhibits as to relevancy. It may be [674] received and marked at this time.

(Defendant's Exhibit JE received in evidence.)

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Ask, on July 6, 1970, were you fishing in your own boat?

A No.

Q Who owned that boat?

A The fish company.

Q And where was the boat docked?

A Where it was docked?

Q Yes, normally, where was the boat kept? Where was the boat kept?

A Well, I was not docked when I was fishing.
Q I understand, but when the boat was not fishing, where was it kept?
A In Kenai River.
Q Is that where the fish company was located?
A Yes, Columbia-Ward.
Q Was July 6 the same day that Mr. DeRossitt also saw the airplane?
A Yes.

* * * *

[675] STANLEY D. SWANSON

being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Swanson?
A 206 Seventh Street, Juean.
Q And what is your occupation?
A Deputy Director, Division of Commercial Fisheries, Department of Fish and Game.
Q And how long have you had this position?
A Since April of '68.

Q Now, have you had any former positions with the Alaska Department of Fish and Game?

A From the fall of '61, October of '61, until April of '68, I was the director of the Division of Commercial Fisheries.

Q And before then, did you have any occupation?

A From '59, July 1 of '59, until October of '61 I was region supervisor for southeastern Alaska.
[676] Q Now, Mr. Swanson, what were your duties as regional supervisor for southeast Alaska between 1959 and October of 1961?

A Training the area management biologists which we got in '59, and management of the southern region.

Q Now, did you have any responsibility with regard

to the Alaska Department of Fish and Game regulations during that period?
A I helped put them together in the fall of '59.
MR. CRANSTON: All right, Mr. Clerk, I would request that Exhibit IT be handed the witness.

BY MR. CRANSTON:

Q Mr. Swanson, you have been handed Exhibit IT. Would you unfold it, please, and examine it?

* * * *

Q Now, Mr. Swanson, during the time you were regional supervisor in southeast Alaska, did you have occasion to see Exhibit IT?
A Yes, in early 1960 we received a series of charts of which this is one. To the best of my knowledge, this is an original overlay of the Scudder-Gharrett charts.
Q All right, and you say you received these charts. Do you know from whom you received these charts?
A To the best of my knowledge, it was from the Fish and Wildlife [677] Service in Juneau.
Q And by Fish and Wildlife Service, to what do you refer; to what government?
A Well, the federal government.
Q All right. Now, do you recall about what time you would have seen these charts?
A I don't recall the exact time, but it would be before the fishing season started—it would be late winter or early spring.
Q In what year?
A Of 1960.
Q All right. Now, would you examine closely Exhibit IT and tell me if the writing on that exhibit and the line which appears on that exhibit are the ones which you recall having seen at the time you described?
A To the best of my knowledge, they're the exact same lines.
Q All right. Now, what would have been the purpose for you to have seen this chart?
A The director at that time, Kirkness, was very interested in them, and likewise, so was I, from the fisheries

standpoint. The base line would, to us, delineate the area from which the three-mile limit would be drawn and which the U.S. nationals could fish and in which the foreign fleets would be excluded, so it was of importance to us.

Q Now, Mr. Swanson, at any time subsequent to the time you have [678] described, did you see this exhibit again?

A As far as I can remember, not until I recovered them last fall.

Q All right, would you describe—

A I may have, but I am not sure.

Q Now, would you describe when you recovered them?

A On the 18th of November in our storage area.

Q And did you place your initials on the chart when you recovered it?

A Yes.

Q And do those initials, S.D.S., appearing on the lower righthand corner of the chart, are those your initials?

A Yes, they are.

Q And you placed them there when you found it?

A Yes, 11-18-71.

Q Now, had you conducted a search of the records of the Department of Fish and Game for these charts?

A I was requested the day before we found them, by the director, Rickey, to search for them, and I mentioned it to one of our fishery biologists in the office. He mentioned that he knew where there was a box of charts in the storage area. We went back and discovered them. We searched for them, found these charts, a series of them, and then called Mr. Check of the Bureau.

Q Now, you say you found a series of charts. Of what other [679] areas of the Alaska coast did these charts—

A Well, as I recall, it was a complete set of the Scudder-Gharrett original overlays, overlays of their original charts, plus copies, one set of copies.

Q And what portions of the Alaska coast did this apply to?

A I have a list of the charts, but as I recall, it went all the way around from southern—starting—going all the way around.

Q To the Arctic coast?

A As far as I can remember.

MR. CRANSTON: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Who told you that these maps were the Gharrett-Scudder Line?

A As I recall, it was the then director, Walter Kirkness.

Q Did you see them identified in any other way by anybody else?

A Not that I recall.

Q How do you know they came from the Fish and Wildlife Service?

A I was told by the then director, Kirkness.

Q Who told you they were the base line for measurement of the three-mile limit for measuring—for excluding foreigners?

A This apparently was the assumption of the director and the commissioner at that time.

Q That is all you know?

[680] A That is all I know.

Q As to the status of these maps and their use and importance, who would know more about them, you, or Mr. Gharrett?

A Well, I would assume Mr. Gharrett would, because he drew them or participated in drawing them.

MR. CHARNEY: May I approach the exhibit?

THE COURT: Yes, you may, counsel.

BY MR. CHARNEY:

Q I show you now the right side of this Exhibit IT. I show you it says "Middleton Island." Do you know Middleton Island?

A Yes.
Q Now, that is a four-sided line, correct, a rectangle —what is it? It's a box, right?
THE COURT: Parallelogram.
THE WITNESS: Parallelogram, right. I was only a math major.
THE COURT: All right, I wasn't.

BY MR. CHARNEY:

Q Do you know the locations of the end points of those lines?
A No, I don't know just how Middleton Island would fit inside of this.
Q Well, the corner, the end point of each side of this parallelogram, do you know whether they're on land or do they stop in the middle of the water?
A Well, to the best of my knowledge, they'd be in the water.
[681] Q In the water, all four?
A Yes.
Q How about on the other side of the Semidi Islands; is that how you pronounce it?
A Semidi Islands.
Q That is also more a rectangle, the four points there. Is each of those corners on the end of the land or in the water?
A As far as I know, in the water.
Q These are both sort of boxes around the islands, correct?
A That's the way it looks to me.
Q Your responsibilities, did they involve the creation of regulations for commercial fisheries?
A Yes, they did.
Q What was your role?
A During what period?
Q Well, when you were involved in creating these regulations.
A At the initial outset when we first put them together, the three region supervisors and the director all worked on them in '59.

Q Was it important to know how enforcement—how these regulations would be enforced?
A Yes, of course.
Q Did you ever deal or help create landing laws?
A I was not intimately involved in the landing law. It was more in Roy Rickey's bailiwick. He was the western region [682] supervisor, and then at a later date the Cook Inlet landing law was established.
Q Well, were you ever involved in the landing law?
A Not directly.
MR. CHARNEY: I move to strike the testimony of this witness identifying the exhibit as the Gharrett-Scudder Line. I move to strike the testimony of the witness as these documents coming from the Fish and Wildlife Service, on the grounds that the testimony is hearsay.

* * * *

[683] THE COURT: The motion to strike testimony will be denied. The Court will evaluate the testimony. The motion to strike that portion which identifies it as the Gharrett-Scudder Line is granted. The Court will disregard that portion of this witness's testimony.

* * * *

[684] ROY A. RICKEY
being first duly sworn upon oath, testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. CRANSTON:

Q What is your address, Mr. Rickey?
A My home address is 1612 Glacier Avenue, Juneau, Alaska.
Q And what is your occupation?
A My occupation now is, I am Director of Commercial Fisheries for the State of Alaska.
Q For what department?
A The Alaska Department of Fish and Game.
Q Have you had any former positions with the Alaska Department of Fish and Game or the Territorial Department of Fish and [685] Game?
A Yes, I have.

Q And what have those been?

A I have been region supervisor in two regions, and I was a research biologist and a management biologist.

Q And in what regions have you been region supervisor?

A Westward region and southeastern.

Q When were you—

A From 1959 to 1961.

Q Now, when you were regional supervisor in the westward region, where were you stationed?

A I was stationed in Kodiak.

Q All right. Now, directing your attention to those years of 1960 and '61, did you participate in the adoption of the original Alaska Department of Fish and Game regulations defining the Cook Inlet area?

A Yes, I did.

Q And what did you do with reference to the adoption of this regulation defining the Cook Inlet area?

A Well, between the Kodiak area and the Cook Inlet area, we had to agree on a dividing line between the two areas.

Q And so, did your functions then involve a determination of what the southern boundary of the Cook Inlet area would be?

A Yes.

Q All right, and do you recall from the regulations what you [686] determined the southern boundary of the Cook Inlet would be?

A Yes. If I remember correctly, we adopted the federal regulations. We proposed them in 1959. The southern boundary was, I believe, from Cape Douglas to Point Gore.

Q All right. Now, after you had participated in this decision, did you thereafter receive from the federal Fish and Wildlife Service any document that confirmed what you did in your definition of the Cook Inlet area?

A Yes, our department received a document from the Bureau of Commercial Fisheries, Fish and Wildlife Service, showing a line that delineated the territorial waters of the state.

Q All right.

MR. CRANSTON: I would request that the witness be handed Exhibit IT.

BY MR. CRANSTON:

Q Mr. Rickey, you have been handed Exhibit IT, and with reference to that exhibit, is this the document to which you referred in your last answer?

A Yes, this is one of the documents we received.

Q I see. Did you receive others?

A Yes, we did.

Q And what were they?

A They were continuations of this line drawn from southeastern clear through Demarkation Point, if I remember correctly; the whole coast of Alaska, in other words.

[687] Q Now, where did you see this exhibit?

A I saw it in the department office in Juneau.

Q And can you tell me the approximate date or time when you saw this exhibit?

A I saw it sometime during 1960. I can't remember the date.

Q And what would have been the purpose for your seeing it at that time?

A The reason we discussed this was we had a question as to how far seaward the state regulations were applicable.

Q I see, and then you used this exhibit as a means to determine that; is that correct?

A Yes, we worked from this base line.

Q Now, Mr. Rickey, you have indicated that this was sent to you or to the Alaska Department of Fish and Game from the Fish and Wildlife Service of the United States; is that correct?

A That is correct.

Q Now, how did you know this?

A I was told this, and I was shown correspondence to this effect. These were received, I believe, by Commissioner Anderson.

Q I see.

MR. CRANSTON: All right, I have no further questions.

THE COURT: Do you have any cross?
MR. CHARNEY: Could the Clerk show the witness Exhibit—Plaintiff's Exhibit 103, please?
THE COURT: Plaintiff's 103?
[688] MR. CHARNEY: Yes.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Mr. Rickey, could you please review that exhibit?
A Yes, I have.
Q Is that the letter of transmittal to Mr. Anderson that you spoke of?
A I can't recall exactly. I thought it was a shorter letter than this, but this is too long ago for me to remember the text of it.
Q You have any doubt that it isn't?
A I did not understand your question.
Q Well, can you testify that this isn't the letter?
A No, I can't.
Q Do you recall any of the words in here?
A Do I recall any of the words in the letter?
Q Yes, or the facts stated.
A Not without having to look at the letter.
Q Well, look at it, then.
A Yes, I am looking at it.
Q Okay, do you recall this letter?
A I recall a letter of transmittal, but I do not recall the text of the letter. I was not there at the time it was received.

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[711] GOVERNOR WILLIAM A. EGAN

being first duly sworn upon oath, testified as follows:

• • • •

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Governor, what is your address?

A It's 716 Calhoun Avenue, Juneau, Alaska, at the present.
Q And what is your present occupation?
A I am the governor of Alaska.
Q How long have you lived in Alaska, sir?
A Going on 58 years. I was born in Alaska.
Q And where were you born?
A At Valdez.
Q And generally, in growing up in Valdez, did you become [712] interested in matters involving Alaska fisheries?
A Very much so.
Q And how long have you had this interest?
A Since I first started working in a salmon cannery at the age of 10 years old.
Q All right, and during the time before Alaska became a state, did you continue your familiarity with the fisheries of Alaska?
A I certainly did.
Q And how were these fisheries controlled?
A The fisheries, both commercial and sport fisheries of Alaska, are controlled by the State through the Department of Fish and Game.
Q And before statehood, do you know how this control was exercised?
A Control was exercised by the federal agency responsible in these matters.
Q All right. Now, one point: How long have you been governor of the state?
A I became governor first on January 3, 1959, until I served two terms, until December 5, 1966. I became governor again on December 7, 1970.
Q All right, so you were the first governor of the state; is that correct?
A Yes.
[713] Q And what did Alaska do at statehood in order to take over control of its fisheries?
A There was a provision in the Statehood Act that the state had to certify to the Secretary of the Interior, and then the Secretary of the Interior would certify to

the Speaker of the House, and the Senate of the Congress, too, I believe, that Alaska had complied with the necessary stipulations that would give it control of the fisheries and game resources under state management.

Q Now, did this certification take place after Alaska became a state?

A It did. I believe it was sometime in April of 1959 that the first certification was made and the state took over control of the fisheries in January 1960.

Q And were these activities of the state relative to taking over the fisheries and fishery matters generally a matter of public concern?

A Very much so. The fight for statehood, the prime important reason for statehood was the feeling on the part of the people of the state that the fisheries were not being managed properly.

Q And in view of the interest of the people, was it important that the area of waters of Alaska pertaining to fisheries be defined?

MR. CHARNEY: Your Honor—

[714] THE WITNESS: Yes.

MR. CHARNEY: The State of Alaska has been leading this witness considerably. At this point, I think we have to object and ask that the questions not be leading.

THE COURT: I don't really find it so, counsel. The objection is overruled. Keep in mind, Mr. Cranston, this is direct examination and, of course, leading questions are improper. I don't find it so at this point; however, the objection is overruled. You may answer, Governor.

THE WITNESS: Yes, of course, that would be a necessity.

BY MR. CRANSTON:

Q And why was this important?

A So that the regulations that would be promulgated would be legal regulations within the jurisdiction of the State of Alaska. I might say, Mr. Cranston, if I might, that in—the State Board of Fish and Game had a meeting sometime in December 1959 in which they adopted substantially the federal regulations and federal definitions of fisheries areas.

Q Now, did these definitions in any way pertain to Cook Inlet?

A Yes, the definitions—definitions as they pertained to Cook Inlet would have been the definitions that had been contained in the federal definition down through the years.

Q Now, generally, what was the concern of the state, if indeed there was any concern, regarding Cook Inlet in this matter?

A Well, right in the beginning, of course, the concern of the [715] state was for all of the coastline, all of the fisheries areas. Naturally, Cook Inlet is an important—one of the important areas in the fisheries of the State of Alaska, and at that—right in the beginning, I don't know that there was a specific—that there was specific things in the minds of the fish and game people other than—different than the considerations over the rest of the coastline.

Q All right. And was there any concern relative to Cook Inlet and the relationship to the term "waters of Alaska"?

A Well, when the matter of Cook Inlet, the definition of the waters was considered, the waters of Cook Inlet, just from the standpoint of the reasonability of the waters being inland historical waters of the State of Alaska, the state adopted the same policing and regulating of those waters that the federal government exercised prior to statehood.

* * * *

[716] Q All right, now, Governor, going to a somewhat different subject, if we may, I would like to ask you if you recall any incidents in 1969 that led up to your subsequent action involving some Japanese herring fishermen in the Shelikof Strait?

A Yes. In 1969 it came to my attention that there had been several violations of Alaskan coastal waters down in the Aleutian Island Chain, and that nothing had been done about these violations by the federal authorities, that they had not brought them to the atten-

tion of the State of Alaska even though there were a number of reported violations.

I wrote a letter to the State Department telling them that the state was vitally concerned and that the state certainly felt that the surveillance and policing of that kind of activity get under way at the earliest possible time.

MR. CRANSTON: All right, I would ask the Bailiff or the Clerk to please hand the Governor Exhibit EC.

BY MR. CRANSTON:

Q Now, Governor, you have been handed Exhibit EC, and this is a series of correspondence. I would ask you to turn in that exhibit to a telegram dated August 1, 1969, from William A. Egan, Governor, to the Honorable Dean Rusk. Do you see that in the file?

* * * *

[717] THE WITNESS: Yes, I have that telegram.

BY MR. CRANSTON:

Q Is this the way you informed the United States Government of the events which you just described?

A That is correct.

Q And would you read that, please?

A "Honorable Dean Rusk, Secretary of State, Washington, D.C., August 1, 1961, Juneau, Alaska. Russian and Japanese vessels reported conducting whaling operations within territorial limits Alaska waters. State patrol vessels unable to keep with situation. Urge State Department request Navy and Coast Guard increase viligence immediately with additional vessels dispatched to scene if possible."

Q Now, Governor, did you receive a response to that telegram?

A Received a letter from Mr. Harrington, the fisheries specialist.

Q I believe in that exhibit file under that telegram which you just read is a letter dated August 15, 1961, from William C. Harrington to Governor Egan. May I again—

A I'm sorry. Oh, here it is, dated August 15, 1961.

Q Now, Governor, is this the reply to which you referred?

[718] A Yes, it is.

Q And would you please read on the second page of the reply the next to last paragraph?

A "As you know, under our system of government, the control of fisheries within territorial waters has traditionally been left to the several states. We should appreciate being informed of the provisions of whatever laws of the State of Alaska might be applicable in the present case, since such legislation might have a definite bearing on federal enforcement capabilities."

Q Now, Governor, concerning that statement of Mr. Harrington's referring to control of the fisheries left to the several states, did you, a short time thereafter, have any incident brought to your attention which required that control?

A Well, in 1962 we received word through Japanese newspapers and through the federal Bureau of Commercial Fisheries bulletins that a Japanese fishing fleet was outfitting to come to the Kodiak Island area, the vicinity of Shelikof Strait, specifically, to fish for herring and to attempt to establish historic rights there.

MR. CRANSTON: All right, I would ask that the Governor be handed Exhibit II, please.

* * * *

[719] Q Now, Governor, in Exhibit II, one or two pages down from the top I would ask you to turn to a translation of a Japanese newspaper.

A Yes.

Q Do you see it there?

A Yes.

Q Now, you, in your testimony, referred to having been made aware of the possibility of Japanese fishing in Shelikof Strait through Japanese newspaper articles. Is this one of the articles which you referred to?

A Yes, this is the article.

[720] Q All right. Now, would you please refer to the third paragraph of that article and read it?

A "Japan is keeping close tab on the regulations of the United States and Canada to this experimental fishing operation inasmuch as Japanese fishing operations south of the Alaska Peninsula are the subject of great controversy within the International North Pacific Fisheries Commission. Reportedly the fishery agency plans to gradually authorize other Japanese firms to operate herring nets should the experimental fishing conducted by the Banshu Maru fleet prove successful, one purpose being to establish historical rights. Also, the agency plans to give careful consideration to the condition of fish stocks and to international developments in authorizing additional operations in these waters."

Q Now, were the possibilities suggested in this newspaper article a matter of concern to the state?

A It certainly was.

Q And why was this?

A Well, because Shelikof Strait traditionally and historically have been waters of the Territory of Alaska and waters of the State of Alaska have been policed and regulated by both the federal government and the State of Alaska Fish and Game authorities as waters of Alaska.

* * * *

[721] Q Now, Governor, upon learning of this proposed Japanese venture in the waters of Alaska, what did you do?

A I took steps to notify the United States State Department and the people in the Interior Department who were responsible for other fisheries activities that related to the federal government, to notify them that the state couldn't count on such a fishery in Alaska waters.

MR. CRANSTON: Would the Clerk please hand the Bailiff Exhibits JG and JH? These, Mr. Clerk, were the ones I had identified and marked just early this morning.

THE COURT: These are for identification?

MR. CRANSTON: Yes, your Honor.

BY MR. CRANSTON:

Q Governor, you have been handed Exhibits JG and JH, JG being a letter dated March 30, 1962, to the

Honorable George W. Ball, Under Secretary of State, from William A. Egan. Is this [722] the notification to which you referred in your testimony, that is the response you made to the United States upon hearing of this?

A It is.

* * * *

MR. CRANSTON: Your Honor, I would as—offer Exhibit JG in evidence as pertaining to the Shelikof Strait incident, and as an official record of the State of Alaska.

THE COURT: Is there an objection?

MR. CHARNEY: No, there isn't.

[723] THE COURT: It may then be marked, Mr. Clerk, after the close of the testimony. Now, you may ask your question, Mr. Cranston.

(Defendant's Exhibit JG received in evidence.)

BY MR. CRANSTON:

Q Governor, would you please read this letter which is placed before you, Exhibit JG?

A Yes. "Honorable George W. Ball," the letter is dated March 30, 1962, "Under Secretary of State, Department of State, Washington, D. C. Dear Mr. Ball: The State of Alaska has been informed by the Coast Guard that a Japanese motor ship and five catcher boats are sailing for the Kodiak area for the purpose of fishing for herring. According to our information, the Japanese ships are planning to stay three miles from Kodiak and mainland coasts. In so doing, the Japanese obviously take the position that they will be fishing in international waters. I have been advised that fishing is being conducted in the vicinity of Chirikof Island south of Kodiak, and it appears likely that the fishing operation will extend into Shelikof Strait and perhaps some areas of Cook Inlet. The State of Alaska has claimed jurisdiction over the entirety of these two bodies of water on historical and geographical grounds, notwithstanding the usual three-mile rule. I am enclosing for your information an opinion [724] issued by the Alaska Attorney General dated December 29, 1959, which sets forth the

basis of the state's claim. The State of Alaska does not wish to cause any international incidents by interference with Japanese operations in view of the paramount responsibility of the federal government in the field of foreign policy. Since this is a matter of serious concern to the State of Alaska, I would appreciate your informing me of what action the federal government intends to take in preventing this foreign fishing fleet from engaging in fishing operations in state waters. Sincerely, William A. Egan, Governor."

Q All right, Governor, did you receive a reply to this letter?

A Yes, there was a reply.

Q And how soon was the reply?

A It was a reply from Mr. Harrington, I believe.

Q Now, before you received the reply, was it necessary for you to communicate with the federal government once again?

A Yes.

Q All right. Now, you have in front of you Exhibit JH. Is this the subsequent reply which you received?

A I would like—Mr. Cranston, I would like to correct—I don't believe I received a reply to this, to the communication that I read, to Mr. Ball. I was thinking to the reply previously that I had sent the year before with relation to the whaling activity out in the Aleutians.

[725] Q And so, then, with respect to Exhibit JG, which was your letter to George Ball, you received no reply; is that correct?

A No.

Q And did you thereafter communicate with him again?

A Yes, I did.

Q And how was that?

A That was by telegram.

Q And is the telegram which you have before you, Exhibit JH, dated April 2, 1962, from William A. Egan, Governor, to Honorable George Ball, that telegram?

A Yes.

MR. CRANSTON: I would offer Exhibit JH in evidence at this time.

THE COURT: Is there an objection?

MR. CHARNEY: No objection.

THE COURT: It may then be marked.

(Defendant's Exhibit JH received in evidence.)

BY MR. CRANSTON:

Q Governor, I will not have you read the telegram. Were you generally—did you state the same things as you did in your letter?

A Yes, and we put—we reported that they had been—the vessels had been sighted in waters that were waters of the State of Alaska.

[726] Q All right. Now, did you receive a response to this telegram?

A I don't believe that I did.

Q Then, Governor, would you describe what events occurred subsequent to the time that you sent the letter and the telegram to Mr. Ball?

A Well, between the time that I sent the letter to Mr. Ball and the time I sent the telegram, you mean?

Q Yes, what—and thereafter, if you will.

A Yes. Well, the Japanese fleet did persist in moving in, and we had no—we didn't receive any word from the State Department. I called the—I phoned the Department of State to talk to Mr. Ball on the phone, told him how serious the situation was, and asked him in that conversation if there wasn't some way they could get together with the Japanese Ambassador and ask them to—if the Japanese would initiate an action recalling those vessels from that area, because of the tremendously volatile situation existing in Kodiak itself, and because of the fact that the State of Alaska would have to move to arrest them in that they were in State of Alaska waters.

Q What, Governor, was the volatile situation in Kodiak to which you refer?

A The fishery, the Kodiak fishery is the life blood of the thousands of people who reside in Kodiak and all

over the island, and they were tremendously upset. They had been [727] getting these reports from the Japanese newspapers and from other sources, also, that the Japanese were coming into that fishery to establish historic rights and there was a very—a very bad chance of violence occurring if something wasn't done.

Q To whom did you fear the violence?

A I feared that the violence could erupt into shooting, shooting at the Japanese vessels or even boarding them, which some of the people who were so intent on securing their own livelihood, it is the human nature thing that happens when someone else comes in to try to take over their traditional fishing grounds that provide their livelihood.

Q All right. Now, in view of this concern, could you describe, then, what took place? Did you have any contacts with the State Department?

A When I talked to Mr. Ball, he said that he would get right on it. He indicated to me that he hadn't seen the previous correspondence, and that he would have someone come right up to Juneau. Within three days, Mr. Ray Yingling, the chief Law of the Sea man in the Department, and someone else, came to Juneau and we had a meeting in my office. I believe that that was on either the 13th or 14th of April.

Q Now, did this meeting solve any of the problems with which you were presented at the time?

A No, it did not. In discussing the problem with Mr. Yingling, [728] I told him how there was a representative of the Coast Guard there and the Coast Guard legal officer, Mr. Moody, the attorney general and then assistant attorney general were among those who were in the office at the time, and I told them I had to make a record. I think the commissioner of Alaska Fish and Game was there. I made it clear to them what a real sensitive and difficult situation was developing and that the State of Alaska would have to move to arrest these people if they didn't get out of there, that those were our waters.

We had a map on the wall and all Mr. Yingling said with relation to his opinion, he said that it would take several weeks for him to research this matter, but that

from a cursory standpoint, just from a cursory look at the map, that he would say that foreign vessels could go up Cook Inlet, foreign warships, even, and I remember asking him what he thought General Mundy would say about that, but I just—that is essentially what happened. There was no—he didn't make any decision and he didn't have—there was nothing decided there.

When Mr. Yingling was leaving, I asked him to come back and reiterated the likelihood that, to him, the likelihood that we would have to move that very day or that evening unless the Department of State could do something to—the next few hours to get these people out of the strait.

[729] Q All right. Now, I take it, then, Mr. Yingling departed; is that correct?

A Yes.

Q And did the state then take any action on its own with regard to this matter?

A Yes, the state arrested some Japanese fishermen fishing in the waters of the State of Alaska, Shelikof Strait.

Q Do you know where the vessels were when the fishermen were arrested?

A I think one of them was within three miles of shore, and one was beyond.

Q Now, after the Japanese were arrested, were they placed in custody of the state? What, exactly, occurred?

A Yes, they were. First, when we knew that we had to do this, all the inquiries made of the State Department and other federal authorities, we found out we had to take this action, we were going to get no help at all in this matter. I mentioned earlier the volatile situation that existed in Kodiak and along the entire fishing ground there, that people were angry and I though how we would board the vessels and how we would take the—take these people in to arraign them. And I called Jim Carroll, the then adjutant general of the National Guard, and talked to him and he said there was a small unit of guardsmen —we only had one or two law enforcement officers in the Kodiak area, but that there was a small [730] unit of

Alaska National Guard members there, and I told him, well, I didn't think that it would be appropriate to have the Kodiak young People in the Guard to be a part of this, that they were fishermen, themselves, and they would have their parents and other fathers would be fishermen and it might not work out too well, but what I wanted was a group to go down there to do everything possible to assure that nothing would happen to any of the arrested people as they were coming ashore, so that we could take the most definite means possible in avoiding any international incident of that nature.

And so a unit of guardsmen were sent down from Anchorage and they were aboard the vessel that arrested the Japanese and took them to Kodiak, and there was no incident of any nature whatsoever. They were arraigned and—under the jurisdiction of the courts of the State of Alaska.

Q I guess an interesting sidelight, Governor, is that there was one injury. Who was that to?

A That was a state trooper by the name of Sergeant Williams who broke his leg boarding the Japanese vessel, one of the vessels.

Q Now, after the Japanese were taken into custody, did they remain in custody for any period of time?

A Not very long. Seems to me at the most it would have been three or four days.

[731] Q What arrangements were made to remove them from the custody of the state?

A Well, an agreement was reached between the lawyers for the Japanese and the lawyers for the state, and with my complete understanding and knowledge that these people would not again engage in any fishing effort in Shelikof Strait or in Cook Inlet, and that was the—and with that, then, with the commander of the fleet signing this document and the state signing the document, then the people that had been arraigned were released to go back to their vessels.

MR. CRANSTON: All right, Mr. Clerk, I would like to hand the Governor—have the Governor handed Exhibit IJ, please.

BY MR. CRANSTON:

Q Governor, you have been handed Exhibit IJ. This is an agreement dated April 19, 1962. Is this the agreement to which you referred?

A This is the agreement that I referred to in my testimony, yes.

Q Now, you stated that you authorized this agreement. Why did you authorize it?

A Well, because we had no—the state had done everything possible prior to the incident occurring and was—I had instructed everyone to be very careful not to cause any more difficulty than was humanly necessary, and we didn't want to get into this argument about an international incident any further than we could—if we could avoid it, and we had no— [732] we didn't arrest these people out of vindictiveness or a desire to want them to go to jail. We arrested them because we had taken all steps possible to keep them out of the State of Alaska waters, and they came in there anyhow, and engaged in fishing. All we wanted was to get them out of there and make as certain as possible that they wouldn't be back again to engage in that fishery.

Q And so, as far as your purposes were concerned, did this agreement accomplish that purpose?

A It certainly did. To my knowledge, there has never been an intrusion or incursion by a foreign vessel of any nation into Shelikof Strait or Cook Inlet in that kind of a fishery.

Q Now, Governor, would the cases which were filed against the Japanese when they were arrested immediately prosecuted?

A No, they were not immediately prosecuted.

Q And why was that?

A Well, because, there again, we weren't—the attitude of the state in that particular case wasn't the bound and determined attitude of getting a conviction and causing these people, the fishermen or the vessel captains any more inconvenience than was possible—than was necessary.

Q Have the terms of the agreement remained to be complied—have they continued to be complied with?

A The terms of the agreement have remained and are still being complied with fully.

[733] Q Now, after the Japanese left on or about the 19th of April, did you receive any communication from them?

A I did. I think it was the commander of the fleet sent me a message through the Coast Guard—U.S. Coast Guard—in which he—it was sort of a pitiful message in a way. He was telling me that his people couldn't go back to—they had been away from home since March 24th or some such date, they hadn't caught a fish, and to go home empty-handed, they would all be broke and they had families—mouths to feed and all, and it was sort of a heart-rending message, but it was a difficult message to answer.

Q Just a moment, Governor. Did you answer the message then?

A Yes.

MR. CRANSTON: All right. your Honor, may I approach the witness and find an exhibit in the Exhibit II?

THE COURT: Yes, you may.

BY MR. CRANSTON:

Q Governor, you have before you a document entitled, "Department of State, Incoming Telegram," which has references to two other telegrams. Is the reply which you sent to the Japanese request to enter Shelikof Strait once again contained in that?

A In this?

Q Yes.

A Yes, it is.

Q All right, where does it appear on this document?

[734] A It appears as—under three.

Q All right, would you read your reply, please?

A "Banshu Maru Number 31, fishing fleet commander. Thank you for your radiogram. Regret that it is impossible for me to grant permission for your fleet to fish in Alaska waters. The cause is before the state supreme court, but even if such were not true, I could not grant such authority to unlicensed fishermen and

for the use of unlicensed gear. The Shelikof waters are inland waters of the United States and Alaska. The historic use and the historic regulatory records speak for themselves. It is undoubtedly true that your company will incur considerable financial loss because of their unfortunate plans to conduct a fishery in Alaska waters, but if the State of Alaska permitted the dispensation you request the eventual result could very well bring economic catastrophe for Alaska's growing sea products industry and a diminishing of all categories of fishery resources to the point where these valuable resources would be non-existent. The State of Alaska bears no ill will toward the officers and fishermen of your fleet, and the State of Alaska also shares the respect and admiration which our United States government has for your nation. The State of Alaska merely urges that your fishing companies use reasonable discretion as to location of North Pacific fishing efforts. The kindness your people extended to Sergeant Williams of the Alaska State [735] Police after Sergeant Williams broke his leg boarding one of your vessels"—signed William A. Egan, Governor of Alaska.

Q And thereafter, did they return to Shelikof Strait?

A They never did.

Q Now, after the incident which you have described, did you have occasion to discuss these events with officials of the federal government?

A Yes, we arranged to have a meeting in Washington, D.C. That was rather early in May, too, as I remember it. We met—the attorney general, Mr. Moody, and Mr. Gross was assistant attorney general, and myself went to Washington. We had a luncheon meeting with Mr. Ball and Mr. Chayes, the chief Law of the Sea man, Mr. Alexis Johnson of the State Department, and there was a representative from the White House and the Alaska delegation, Senator Bartlett, Senator Gruening and others, and Secretary Udall was there.

MR. CRANSTON: All right, Mr. Clerk, could you hand Governor Egan Exhibit 76, please?

BY MR. CRANSTON:

Q Governor, you have before you Exhibit 76 which is entitled, "Department of State Memorandum of Conversation," and it is dated May 8, 1962, Secretary's Dining Room, and the subject, Discussion at lunch of Alaska's Fishing problems. Is that date and the luncheon meeting therein referred to the meeting to which you referred in your testimony?

[736] A Yes, it does.

Q All right, I would ask you to look over this exhibit if you would and determine or tell us whether this is an accurate statement of what took place at that luncheon meeting?

A Well, there is some inaccuracy here in—as you go down into the memorandum. First, I would like to say that I had no idea that there was anyone there taking this kind of information. It was a luncheon. We were sitting across a long table from each other, and to the best of my knowledge there wasn't any—I didn't know that there was anything being taken, but I—Mr. Chayes' statement that at that luncheon did not jibe with the opening statement here. In other words, what I would like to say is that Mr. Chayes never did say that the State Department would have to take the view that these were international waters. It was, naturally, in the conversation they hadn't made their determination yet, and the possibility of that was open, but as we left that luncheon, Mr. Moody, the attorney general, and I were both—felt elated in that we had been worried that perhaps their [*sic*] would be unilateral political declarations made with respect to these waters on the part of the Department of State. We came from this luncheon meeting feeling very strongly that there was no intent to take that kind of unilateral action.

Q Was it indicated to you at this meeting by anyone that the Department of State had considered that the State of Alaska [737] acted improperly in the Shelikof Strait incident?

A Well, only like I say, any fire only came into the luncheon at one time. That was when it just happened

that Secretary Udall said to me, he said, "Bill you know the Japanese Ambassador said to us that he thought this was a sort of Russian-like action," and I said to him, I said, "Well, did he say anything about when the Arizona went down at Pearl Harbor, did he think that was a Russian-like action," and that was the last of anything that was out of line in any way, shape or form at that meeting.

Q And then no one from the State Department indicated any criticism; is that correct?

A Absolutely not.

Q Was Attorney General Moody at this conference?

A He was.

Q Governor, I would ask you to turn to page two of Exhibit 76, and I am referring the fifth full paragraph. Would you read that fifth full paragraph, commencing with the statement, "Governor Egan"?

A Yes. "Governor Egan and the Congressional Delegation spoke at length on base lines and indicated that their use in the future as in the past by the Fish and Wildlife Service pursuant to a Congressional law of some years ago would clearly exclude foreigners from fishing in Alaskan waters. Attorney General Moody illustrated base lines on a large map of the [738] area showing that with their use Shelikof Strait would be reserved for Alaskans only.

MR. CRANSTON: I would ask that the witness be handed a copy of Exhibit IT, please.

BY MR. CRANSTON:

Q Governor, you have been handed a copy of—or you have been handed Exhibit IT, which is an overlay to U.S. Coast and Geodetic Survey Chart 8502, Cape St. Elizabeth to the Shumagin Islands, and I would ask you to look at the line on that exhibit which you have and ask you if that line is essentially the same as was shown and discussed by Attorney General Moody at the meeting in the State Department which we were talking about?

A This line beginning with Perl Island, if that relates to below the Kenai Peninsula area there, yes, it would

be, following all the way down to Ugak and Cape Sitkinak. Yes, it follows the lines, and I think you will find the description in the agreement made with the Japanese and accepted by them that these general places will show up as the lines that they agreed to stay out of.

Q All right, Governor, then commencing at Perl Island on Exhibit IT, would you read the points which represent the places to which the line goes? Would you start reading at Perl Island and read along the cost of Kodiak?

A Well, on this, it goes from Perl Island down to Point Banks, [739] and down to Marmot Cape, south of—or I guess you would call that southeast of the Barren Islands and then down to Ugak Island off of Kodiak, Cape Sitkinak. It goes to Tugidak and up to Cape Ikolik, and then right across Shelikof Strait to Kilokak Rocks.

Q Kilokak Rocks?

A Kilokak Rocks.

Q Now, I believe we can remove Exhibit IT from the witness stand.

Now, Governor, you have before you Exhibit IV which is the agreement.

MR. CRANSTON: May I approach the witness and locate the Exhibit?

BY MR. CRANSTON:

Q Now, Governor, would you read the description of the area embodied in the agreement which is described as Exhibit IV?

A "Beginning at a point on the outer perimeter of the Barren Islands and proceeding in a southerly line to the outermost perimeter of Marmot Islands, thence on a line to the outermost perimeter of Ugak Island, thence on a line to the outermost perimeter of Cape Barnabas, thence on a line to the outermost perimeter of Black Point, thence on a line to the outermost perimeter of Two Headed Island, thence on a line to the outermost perimeter of Sitkinak Island, thence on a line to the outermost perimeter of Tugidak Island, thence on a line along the

coastline to Cape Ikolik, thence on a straight line [740] directly across the strait to Kilokak Rocks."

Q That is all. Now, Governor, I would ask you at this point to leave the witness stand and approach the exhibit, U.S. Chart 8502, over there, and outline the area which is described by these exhibits in order to familiarize the Court with the geographical area involved.

A From Perl Island here—

Q Governor, just generally define it.

A From here and down and across to Marmot Island (indicating), and down through here and down—well, here's Tuginak, and then back up to Cape Ikolik, and right across here.

Q All right, thank you. You may take the stand again.

* * * *

Q Was Cook Inlet included within the areas which you have described?

A Cook Inlet was included.

* * * *

[741] Q Governor, after the meeting in the State Department which we have just been discussing, on May 8, this—what was the State's greatest concern, now, concerning the incident in Shelikof Strait?

A Well, of course, the concern that we had was the possibility that there would be a unilateral declaration or proclamation declaring those waters to be international waters.

Q Was anyone in your administration, including yourself, aware of a note which had been sent by the Government of Japan to the State Department?

A We were then, or shortly thereafter, aware of a message that had come from the Fisheries Ministry of Japan to the State Department.

Q Governor, I would ask you to turn in Exhibit II, which is in front of you, to the diplomatic note from the Ambassador of Japan to the United States, dated May 3, 1962. I believe you have in front of you paragraphs six and seven of that note, [742] do you not?

A Yes.

Q All right, would you read those, please?

A Paragraph six, "The Government of Japan reserves the right to request the Government of the United States to compensate for all damages incurred in the past or to be incurred in the future by Japanese nationals in connection with the recent actions of the Alaska state authorities."

Paragraph seven, "The Government of Japan is deeply concerned with the effects of the recent unilateral actions of the United States upon friendly relations between the two countries and requests the Government of the United States to take appropriate steps immediately. Embassy of Japan, Washington, May 3, 1962."

Q Now, was there anything there, anything about the suggestion of appropriate steps to be taken which gave you concern?

A That gave us concern, yes, and I am sure that now that my memory comes back, we learned of this note before we had this meeting with—this luncheon meeting, and following that meeting I was confident after what had transpired at the meeting that there wasn't going to be any such declaration. I was confident in my own mind that the people in the State Department weren't all that certain that these were Alaska waters.

Q All right. Now, Governor, if you would turn in Exhibit II to [743] a document dated May 29, 1962, from the Assistant Legal Advisor to the Secretary, Raymond Yingling, to Mr. Leonard L. Bacon.

MR. CRANSTON: Your Honor, may I approach the witness and locate this?

THE COURT: Yes, you may.

BY MR. CRANSTON:

Q Now, this document is, as you notice from Raymond Yingling. The first paragraph notes the existence of the Japanese communication and the necessity for the answer and suggests that Mr. Yingling reply. Would you please read the portion of the communication which is under I(1)?

A (1) Shelikof Strait. "Concerning the status of Shelikof Strait, the note will indicate that this government does not regard it as an inland waterway on historic grounds, but considers that the waters of this strait outside the three-mile belt along the mainland and around Kodiak Island are high seas."

* * * *

Q Was this the sort of reply with which you were concerned at the time?

[744] A This is the sort of reply which I was concerned prior to the time of the luncheon meeting with representatives of the State Department.

Q Now, do you know whether there was a reply to the Japanese note from the United States?

A There was a reply, yes.

Q And do you know whether the reply contained the statement which was suggested by Mr. Yingling in the document you just read from?

A No, the reply did not go along with Mr. Yingling.

* * * *

Q Governor, I would ask you to refer to Exhibit II and that portion of the exhibit which is the response by the United States to the note of the Government of Japan.

MR. CRANSTON: Once again, your Honor, may I approach [745] the witness?

THE COURT: Yes, you may.

BY MR. CRANSTON:

Q Governor, would you please read the note which has been referred to?

A Yes. Now, this is at the bottom of the paragraph. Should I read the whole—"The Secretary of State presents his compliments to his Excellency, the Ambassador of Japan, and has the honor to refer to the latter's note P-30 of May 3, 1962, concerning the recent incident involving Japanese fishing boats in the Shelikof Strait between the Alaska Peninsula and Kodiak Island.

"As the Government of Japan is aware, the matter of the seizure of the Japanese fishing boat is now before

the courts of the State of Alaska. The Department agrees that the jurisdiction of those courts depend on whether, under international law, the vessels were seized on the high seas or within the territorial jurisdiction of the State of Alaska.

"A decision on this point necessarily involves determination of questions of fact as well as of law. That is, the precise position of the vessels when seized as well as the interpretation of the provisions and rules of law applicable to the facts of the case.

"Other information presently available to the Department. It appears that the vessels may have been within the state's [746] territorial waters, but until the courts have acted to establish the facts, the Department does not consider it proper to take a position as to whether the vessels were seized within the jurisdiction of the State of Alaska or on the high seas.

"The points raised in the various numbered paragraphs of his Excellency's note are under study in the appropriate departments of the Government of the United States, but in view of the considerations noted above, it is desired to respond to them at a later time."

Q Governor, are you aware of any response later made by the United States Government to the Government of Japan?

A I am not.

Q All right. Have any subsequent incidents of this type occurred in Shelikof Strait or Cook Inlet?

A None.

Q And why has that been?

A Because I am certain that—that because of the agreement made and because of the recognition that these waters are waters of the State of Alaska.

MR. CRANSTON: I have no further questions.

THE COURT: You may cross examine, Mr. Charney.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Governor, I am very thrilled to have you here testifying. [747] It is a pleasure listening to you. I—as we did in your office a few months ago, I am going to ask you some questions now.

Governor, subsequent to the Shelikof Strait incident, did—I think you have testified that you were not noticed that the United States did not claim Shelikof Strait as international waters?

A The United States, so far as I know, Mr. Charney, has never noticed me that those are waters of the United States.

Q Well, never noticed you that they were high seas?

A That they were high seas, yes, that they were other than waters of the United States.

Q Okay, and you don't recall any other time that you had occasion to worry about this; that is, that no foreign vessels fished in Shelikof Strait, subsequently?

A I can't—since?

Q Yes.

A Since the Shelikof Strait incident with the Japanese, no.

Q And you also don't remember the statement of Abram Chayes shown in that memo, Exhibit 76, is that correct, the memo of the meeting that was in the luncheon conference?

A Where there is an indication that he said flatly that these are waters, or are international waters and there is nothing else we can do but declare them as such, no.

Q You don't remember that. Did the State of Alaska make a [748] memorandum of that conversation?

A No.

Q You don't have any memo of that conversation?

A No.

MR. CHARNEY: May I ask the Clerk to mark this document?

THE COURT: Yes, it may be marked as Government's next in order.

THE CLERK: Plaintiff's Exhibit 118 for identification, your Honor.

(Plaintiff's Exhibit 118 marked for identification.)

* * * *

MR. CHARNEY: Well, I think I am going to ask the witness to read portions of this.

THE WITNESS: Yes.

[749] BY MR. CHARNEY:

Q Could you identify the first letter in that pile?

A Well, undoubtedly, that letter was written by me.

Q It is a letter from you?

A It relates to Russians having been in those waters in 1965.

Q Who was that written to?

A It was written to Mr. William C. Harrington.

Q Okay.

MR. CHARNEY: May I approach the witness?

THE COURT: Yes, you may.

THE WITNESS: I didn't think we were—ever had any trouble with the Russians inside after 1962 or that there was anything after the Shelikof Strait incident where foreigners had gone in or attempted to go in. I can see, obviously, here, evidently that wasn't the case.

BY MR. CHARNEY:

Q Would you read this letter, please?

A "Mr. William C. Harrington, April 29, 1965. A potentially explosive situation is developing. On April 27, 1965, the Department of Fish and Game sighted four Soviet trawlers within Shelikof Strait near Shuyak Island at 11:40 a.m., Kodiak time. These vessels were again sighted between 3:30 to 4:30 p.m. by the Department and the United States Coast Guard. At this time, two of the vessels had departed eastward from Shelikof Strait. The other two were heading north along [750] Shuyak Island as if they were leaving. The vessels were identified on the 335 as follows," then it gives the degree headings for—

Q You can skip that.

A "Identification was not made at the 11:40 a.m. sighting, however. One vessel was anchored two to three miles of Shuyak Island at 152 degrees, 40 minutes west by 58 degrees, 30 minutes north. The other three vessels were about eight miles off Shuyak Island in the vicinity of 152 degrees, 50 minutes west by 58 degrees 35 minutes north. Two of these appeared to be fishing. The hammer and sickle could be seen on all four vessels.

"In view of the claims to these waters by the State of Alaska, which has not been denied by the federal government, and the intense feeling of all Alaskans regarding this, a potentially explosive situation exists if the Soviets continue to invade the waters of Shelikof Strait. It would be appreciated if you would take the necessary steps to so notice the Soviet authorities and request that their fishing vessels refrain from entering the internal state waters of Shelikof Strait. These waters are generally recognized as extending from the tip of the Kenai Peninsula extending to the northerly tip of Shuyak Island, thence down the shoreline of the Kodiak group, and thence across the strait from Cape Ikolik to Kilokak Rocks. I would like to be advised of the [751] results of the action you take." Signed William A. Egan, Governor.

Q Now, next is a letter to you. Well, further down, a letter to you from Mr. Harrington, correct?

A Yes.

Q And that is dated May 14, 1965, correct?

A Yes.

Q Could you please read that?

A It is addressed to me. "Dear Bill, I am writing with regard to your letter of April 29 on Shelikof Strait, which was acknowledged by Fred Taylor on May 6. I am informed here that the United States Government has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait, or exercised dominion. They are outside of the three-mile belt of territorial sea along the coast on each side of the strait.

"In view of this, I am sure you appreciate that any approach we might make to the Soviets on the matter would have to be based solely on consideration of public

sentiment giving rise to a request that they voluntarily refrain from sending their vessels into these waters in order not to upset existing fisheries relationships, and my opinion and official approach along these lines would almost inevitably require this government, perhaps in response from inquiries from the U.S.S.R., to take a public position concerning the status of [752] the waters of Shelikof Strait. This could be to Alaska's disadvantage with both the Soviets and the Japanese might even have the effect of stimulating foreign fishing in these waters.

"It occurs to me also that a request along the lines you suggest might be against our interest in connection with the renewal of the king crab gear conflict agreement and other important matters on which we need Soviet consideration. In view of these considerations, it appears to me that the disadvantages of making a move at this time are such as to indicate delay pending further assessments of the situation as it develops.

"It may be that the incident will not be repeated. Meanwhile, I shall be further considering how we might handle this matter, and expect to be in further touch with you." Signed William C. Harrington.

Q Who was William C. Harrington?

A He was the Special Assistant for Fisheries and Wildlife to the Under Secretary of State.

MR. CHARNEY: Now, I would like to offer Exhibit 118 and ask it be received in evidence.

THE COURT: Any objection?

MR. CRANSTON: There is no objection, your Honor.

THE COURT: It may then be received and marked.

(Plaintiff's Exhibit 118 received in evidence.)

[753] BY MR. CHARNEY:

Q After the Shelikof Strait incident, Governor, did you have any trouble with the Coast Guard and Bureau of Commercial Fisheries in noticing you as to when foreign vessels were fishing inside the waters claimed by Alaska?

A Well, I don't think that the notifications came through directly and promptly to the Department of Fish and Game or to my office, no. I think they—whether you could call that a difficulty or whether it was just a laxity on their part, I don't know.

Q And therefore, you complained and asked to make sure that you would be noticed of this?

A I certainly made it clear that we wanted to be noticed.

Q There was evidence based on other facts that you weren't noticed as to some incidents?

A Yes.

Q The answer is yes?

A Yes. But, you see, the dates here would show that, too. See, this is after—I didn't learn of it until after the fact.

Q Now, at this luncheon meeting in '62, isn't it true that one of your purposes was to persuade the federal government not to make a public statement on Shelikof Strait?

A Well, I don't know that that was the purpose. We went back there to meet with them and let them know that these were waters of the State of Alaska, and why, and show them clearly [754] and distinctly that the federal government itself had regulated and placed these waters as waters of the United States since goodness only knows how long back.

Q Did you ever fish commercially in Cook Inlet?

A No, I never did.

Q Do you have any personal knowledge of any enforcement actions taken by the United States Government in Cook Inlet?

A Only as they would relate to hearsay and general knowledge in talking to fishermen. Alaska has been a small populated area for—since the time it became a territory and you just get the stories from the various areas.

Q You have no—of your own knowledge—

A I couldn't name an individual, no, but I know that people were arrested.

Q You didn't see the arrests or—

A No.
Q How about in Shelikof Strait, the same thing?
A I don't know there.
Q You don't know—
A I don't know that people had tried to—
Q —of any enforcement action taken?
A I don't know of any foreign arrests other than the arrests that we made.
Q You don't know about any American arrests, either, by the federal government in Shelikof Strait?
[755] A Well, the federal government has regulated and policed it.
Q I am not asking you to testify as to what you had heard from other people. I am asking you what you know of your own knowledge.
A I haven't seen an arrest being made, but knowing the federal government, I know that they must have made plenty of arrests in that area in managing the fishery.
MR. CHARNEY: I would like to move to have the last part of that question—the answer stricken as not responsive to the question.
THE COURT: Motion is granted. The last part of the answer will be stricken and disregarded.

BY MR. CHARNEY:

Q Now, you asked the federal government to do something about the Japanese fishing in Shelikof Strait?
A You mean at the luncheon?
Q No, prior to that.
A Yes, we did, as it indicates we tried to do in '65 even later when I—
Q Isn't it true that you—the arrest was done solely on your authority and not as a request of the State Department?
A Well, Mr. Charney, we couldn't get any response out of the State Department. The State Department wouldn't take a position, and we—it was only through—finally, after a series of letters and other communications, a phone call from [756] me to Mr. Ball, the under secretary of state, that we finally got Mr. Yingling up here. But, with respect to the fishing, you asked me

about the meeting and what was said, I can say, Mr. Charney, that the President of the United States told me that we did the right thing. It was a breakfast meeting in the White House in January, 1963.

• • • •

Q Okay, subsequent to the 1965 letter from Mr. Harrington stating that the United States didn't recognize Shelikof Strait as waters of Alaska, did you ever receive any other communication concerning the limits of the territorial sea of Alaska?
A Not that I know of.
Q Do you recall any maps of the territorial sea of Alaska that you received from the State Department?
A No, the only maps—the new charts, are you referring to?
Q Yes.
[757] A Rather than the maps that came about, or the charts that came about as a result of the arrest of the Warren P. Harding.
Q I am speaking about the charts that you have received from the State Department during your governorship.
A Yes, we are aware of those charts.
Q Did you receive those charts?
A We received them after we found out that they existed.
Q Have you seen those charts?
A I haven't personally gone through all of the charts, no.
Q Well, you have seen the set?
A I have seen some of them that they have drawn, yes.
Q They cover the entire coast of Alaska?
A Yes. The State of Alaska figures it objects to those charts as being—
MR. CHARNEY: Would you mark this, please, Exhibit 119?
THE COURT: 119 for identification. I presume you are going to furnish copies of these to—

MR. CHARNEY: Yes, I am.

(Plaintiff's Exhibit 119 marked for identification.)

MR. CRANSTON: I was going to mention that usually we have not been furnished copies.

MR. CHARNEY: Would you please hand those to the witness?

BY MR. CHARNEY:

Q Are those the charts you received, or copies of them?

[758] A I haven't seen—no, I haven't seen this chart—wait a minute. I saw a small facsimile of this one where it makes this cut up into Cook Inlet. I have seen a small facsimile of this, yes.

Q I believe you wrote to the President about this—

A Yes.

Q —correct?

A On August 1 or August 14 or something like that, of 1970—'71.

MR. CHARNEY: Would the Clerk please take this from me, and mark—have this marked as the next exhibit?

THE CLERK: 120 for identification.

(Plaintiff's Exhibit 120 marked for identification.)

BY MR. CHARNEY:

Q Is this the letter you wrote to the President concerning these maps?

A Yes, it is.

Q I believe you protested these maps, correct?

A Pardon me?

Q You protested them?

A I certainly did.

MR. CHARNEY: Could the Clerk mark that?

THE CLERK: Plaintiff's 121.

(Plaintiff's Exhibit 121 marked for identification.)

[759] BY MR. CHARNEY:

Q Isn't this the response you got? We are looking at 121 now. Isn't this the response you got from the Under Secretary of State?

A Yes, it arrived at my office after Christmas, in response to our letter of August, but they say in this letter that they want us to recommend places where they may have made errors or where the lines aren't correct or something like that, as I remember it.

Q Let's read some of this letter. Start with the third paragraph on the first page. "The drawing of these boundaries"—would you read that, please?

A "The drawing of these boundaries involved in considerations which are fundamental to the policy of the United States Government on the International Law of the Sea. Accordingly, overall responsibility for the project was given to the Law of the Sea Task Force, an inter-agency group composed of representatives of the Departments of Commerce, Defense, Interior, Justice, State and Transportation, which directed that the lines be drawn in a manner consistent with the provisions of the Convention on the Territorial Sea and the Contiguous Zone and long-standing U.S. policies concerning the interpretation of that convention.

"An inter-departmental committee operating under the authority and direction of the inter-agency task force then [760] performed the technical task of drawing the precise lines reflected on the maps."

• • • •

Q Would you continue to read the first paragraph on page two?

A Yes. "With particular reference to straight base lines, the United States has always avoided their use for reasons [761] related to our national security and more recently to the current negotiations on the law of the sea."

Of course, Mr. Charney, that hasn't been the case along the Alaska coastline. They have regulated the whole thing on a base line concept.

MR. CHARNEY: I move to strike that.

THE COURT: Yes, Governor, you have just been asked to read that. If you will do so, and then your

attorney will have an opportunity to redirect examination.

THE WITNESS: "The President's ocean policy recognizes the basic national security objectives involved in our International Law of the Sea efforts, and those objections are foremost in the consideration of policies such as that concerning the drawing of maritime boundaries. In particular, the Executive Branch has considered the preservation of freedom of navigation and over-flight in ocean areas a matter of utmost importance and we have thus consistently avoided any action which would encourage expanded jurisdictional claims in such areas by the countries. Straight base lines have been misused, which means countries do close significant parts of the high seas. The United States has consistently avoided any use of straight base lines in order not to undermine our refusal to accept them as used by other countries and in order to avoid encouraging other countries to expand their claims to the high seas."

[762] BY MR. CHARNEY:

Q And could you read the first sentence of the next paragraph?

A "The maps published in April of this year were thus produced in accordance with carefully developed policy."

Q Do you know Under Secretary of State Irwin?

A I don't know him, no, not that I know of.

MR. CHARNEY: Could we have the Clerk hand Governor Egan Exhibit IT?

I would like now to offer—let's see, what exhibits do we have, 119, 120 and 121. I would like to offer those three and ask they be received in evidence.

THE COURT: Is there an objection? Exhibits 119, 120 and 121 have been offered by the Government.

MR. CRANSTON: There is no objection, your Honor.

THE COURT: They may then be marked and received into evidence.

(Plaintiff's Exhibits 119, 120 and 121 received in evidence.)

BY MR. CHARNEY:

Q Now, Governor, you discussed the lines drawn on this exhibit it?

A Yes.

Q And you said a line from—a straight line from one place to another and another. Now, that was a series of straight lines, [763] correct, from one point to another?

A Generally speaking, yes.

Q It didn't follow sinuosity of the coast, did it?

A It what?

Q The undulations of the coast, the moving back and forth following the shoreline.

A You mean it didn't go in and around the island like this, it went from point to point?

Q Yes. The answer is yes, to my question?

A Well, I don't know—it would go from one place down across—

Q Well, you picked a point on one island and then drew a straight line to a point on another?

A That was what the general outline of—the manner with which the regulations and policing has been accomplished.

Q I am asking you about this map, the lines that you have discussed on that map. They went from straight line—from a point on the shore, a straight line to the next point?

A Yes, generally speaking.

Q And went the number of miles between those points?

A Well, yes, except here in one place there was a variation near the Barren Islands, as I remember it.

Q On this map there is a variation? What do you mean by a variation?

A What I mean is you go to the map, somehow they went—came out from the Barren Islands.

[764] Q What do you mean? This map was not the map that you saw.

A No, no, I mean in looking at that map, there is an area there between—down in here (indicating) where

you might be able to say—where they didn't follow a completely straight line or something across.

Q Are you privy to all State Department diplomatic notes to foreign governments?

A No, absolutely not.

Q After the Japanese vessels were taken by you in Shelikof Strait, isn't it true that there was some confusion as to the exact location of the seizures, geographic locations?

A I don't think there was any confusion insofar as the state was concerned. They were picked up where they happened to be.

Q No, but communicating that, say, to Washington, wasn't there some telegrams back and forth trying to find exactly where?

A Not that I know of. Washington appeared confused, but we just didn't get any information out of them long before we were trying to get them to do something.

Q Were some vessels seized within three miles of the coast?

A Let's see. I think there were two vessels seized, and it happened that one was within three miles and one beyond three miles.

Q Wasn't one within three miles of a closing line of a bay?

A Well, that you would have to ask someone a little more expert [765] than I.

Q You don't know about that?

A No, not that I—I may have known it or heard people talking about it, but not—

MR. CHARNEY: Have we offered all the exhibits?

THE COURT: Yes, you have. They have been received.

• • • •

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Governor, I would like you to refer to Exhibit 120.

MR. CRANSTON: Does the Governor have Exhibit 120?

BY MR. CRANSTON:

Q In paragraph—the second full paragraph on page two you refer to the historic record. Now, I would like to ask you has anyone connected with the federal government ever discussed [766] with you the historic record concerning Cook Inlet?

A No, but I thought that that is what this lawsuit was all about, that the historic record was becoming a part of this record.

Q Now, has anyone representing the federal government ever told you that the historic record did not support Alaska's claim to Cook Inlet?

A No.

Q When, Governor, were you first asked by the United States with respect to the historic aspects of the coastline of Alaska to submit any historic data to them?

A To the best of my knowledge, the letter that was referred to here earlier that was received late in December by me from the State Department was the first—the first time that they asked for any historic data as to the bays and inlets and lakes and what-have-you along the coastline.

Q Now, that is the letter dated December 22, 1971, to you from John N. Irwin, II, that is Exhibit 121?

A Yes, that is the letter.

Q Did Mr. Yingling in his conversations with you back in 1962 ever indicate any familarity with the history of Alaska?

A No, he did not. Later, at a luncheon in Washington he made it clear there what the history record was.

• • • •

[767] Q Now, Governor, going to one other aspect of your testimony, you indicated on Mr. Charney's cross examination that you had received a communication from the President of the United States regarding the Shelikof Strait incident. Do you recall your testimony?

A No, I didn't receive a communication. It was sometime in January 1963 I was invited to breakfast

at the White House along with several other governors from the western states. At the breakfast, among those who were there was the attorney general, then Attorney General Robert Kennedy, and the President, John F. Kennedy. During the conversation that morning, the attorney general brought up the subject of the problem with the Japanese in Shelikof Strait in a friendly way. At first, that was all, and then I turned to the President [768]—the President was talking to—and I turned to the President and I said, "Mr. President, I want you to know that that action wasn't taken flaunting the authority of the United States. Those are waters of the State of Alaska," and he said, "Oh, I think you did the right thing," just like that.

Q What president was that?
A President John F. Kennedy.

* * * *

DEPOSITIONS ADMITTED IN EVIDENCE

* * * *

HARLEY ADAMS

a witness named in the annexed notice, being first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Would you state your name, please?
A Harley Adams.
Q What is your address?
A 2125 Stevens Way.
Q And what is your age?
A Fifty-three. I have to stop and think.
Q Okay. By Stevens Way, you mean in what town?
A McKinleyville.
Q California?
A Yes.

Q Do you have a post office box address?
A No, just 2125 Stevens Way.
Q And what is your occupation?
[2] A Ceramic tile contractor and fisherman too, you know.
Q All right. How long have you been in the fishing business?
A Oh, since 1951 or two.
Q And have you ever been engaged as a commercial fisherman in the Cook Inlet area in Alaska?
A Yes.
Q And when has this been?
A From fifty-seven on until to date, although there was some years in between that I didn't fish.
Q All right.
A This year I fished.
Q And what type of fishing have you done in Cook Inlet?
A Gill netting only.
Q And what sort of fish are you attempting to catch?
A Mainly red salmon.
Q You fish for yourself up there or do you fish for someone else?
A Yes, I have my own boat and I fish for a company boat too, for K and I Packers.
Q Generally how long do you remain in the Cook Inlet during any particular fishing season?
A Six weeks, two months. One time I was there almost four, that was 1957, in fact. I was there four months that year.
Q Do you fish elsewhere in Alaska?
A No. No.
Q I see. All right. Now, in your experience in Cook Inlet have you ever had any incidents with any governmental agency, involving any governmental agency?
A How do you mean governmental? Now, I suppose you mean Fish [3] and Wildlife?
Q Yes.
A Yes.
Q And what has—what have those or what has that been?

A Well, had a citation at one time by them.
Q All right. Do you know when this was?
A Yes, 1957. I don't recall the date.
Q What month would it have been in?
A I'm sure it was July.
Q Now, by a citation to what do you refer?
A Notice to appear.
Q I see. Could you relate the substance of the incident involved?

A Well, I was fishing in a—in the middle of the inlet out there in a rip, what they call a middle rip and of course, it's two bodies of water coming together out there, one side is clear and the other is a chocolate color and the waters is all in a turmoil there at that one point and the salmon follow on the clear side almost every time. I mean, they run right up coming into the cold water, along the dark water's edge and they follow the dark water edge and they follow up the inlet on their way to spawn, of course, that's where we try to get them.

Q All right. Now what happened at this particular time that caused you—

A (Int'g) I got tangled up with another fellow with his nets side by side and in the middle of the rip and the nets all tangled together and the Fish and Wildlife came over in a big boat, about one hundred—I don't know—between one hundred and two hundred [4] foot boat. I've even forgot the name of the boat. But, they watched me for some time. I was aware of them there but they finally motioned me to come over. I think they gave me the horn and I came over there and they gave me a little slip, notice to appear.

Q How did you know this was Fish and Wildlife?
A Well, I didn't except for the notice, that's what it said on it.
Q I see. And what specifically did it say?
A A notice to appear at some certain date but a future date and I was to receive the letter telling me when but I guess for some reason or another, I lived on the beach at—

MR. BRADLEY: I object to this as the best evidence rule.

MR. CRANSTON: You may continue and where were you told—where were you directed to appear?
A Kenai, at the Fish and Wildlife office there.
Q I see. Is that the United States Fish and Wildlife?

MR. BRADLEY: Objection, it's leading. You can continue.

THE WITNESS: Alaska Fish and Wildlife, I believe.

MR. CRANSTON: All right, but this was in 1957?

A That's right, it was a territory, wasn't it. Yes. Yes. I don't know. It was called Fish and Wildlife at that time. I suppose it still is.

MR. CRANSTON: I'd like to have marked as Defendant's Deposition Exhibit One a chart, eighty-five-0-two, United States Coast and Geodetic Survey, sixtieth edition, July 4th, 1970, [5] corrected through notice to mariners, twenty-seven slash seventy.

THE REPORTER: Marked Defendant's One.

MR. CRANSTON: All right. Mr. Adams, I'm going to hand you what has been marked as Defendant's Deposition Exhibit One and ask you if depicted within the area denoted as Cook Inlet is included in the area in which you fish?
A Yes, it is.
Q Now, I'm going to hand you a red marking pen and ask you to place a circle, better than that, an X on the map, at the location as you can best remember where you were given the citation you have just testified to.
A Yes. I remember it was on the outside of this bar. This bar extends right here.
Q By right here, you're pointing to a bar extending south of Kalgin Island?
A This buoy is marked now, it wasn't then.
Q You're talking about a buoy right above the "E" in the word Cook Inlet?
A Yes, this buoy right here. Now, I was somewhere right in this area.
Q All right. Would you put a circle in that area where—
A (Int'g) I'll put a circle. I'll include this "T", I think it's—and I feel it's very close to where I was.

Q All right. This is the area where you were when you were approached by the boat?

A Right.

Q The Fish and Wildlife?

A Right.

[6] Q And the year again that this took place, that circle that you approached in the area within that circle, was what year?

A 1957.

Q And the month again?

A July. I'm certain it was July. I fished in June but in June I was over on this side of the island. So, I don't think it was in July, red salmon.

Q All right. Now, what did you do if anything as a result of the citation which you were given, did you go anywhere?

A I didn't do anything for awhile and I received a letter by—in person—by three game wardens, walked out to my cabin and had a cup of coffee and issued me the real citation then, and then I was to appear which I did in the next couple of days or so.

Q All right. And where did you appear?

A At Kenai at—at the old fort there, that area that the Fish and Wildlife still have, I believe.

Q And did you appear before any person?

A Yes, I did, the judge.

MR. BRADLEY: I object to that answer as being a conclusion as to the nature of the person he appeared before.

MR. CRANSTON: Were you informed that this man was a judge?

A No.

Q How did you know he was a judge?

A It was the courtroom.

Q I see.

A So, I assumed he was a judge.

[7] Q Where was he, where was this man seated in the courtroom?

A I'll have to think. Well, he was up front maybe like this and I was back here and—

Q (Int'g) By like this, what do you mean, he was seated at a table or on a bench?

A Yes, he was down on a table with a chair and a table and—

Q (Int'g) I see.

A And asked me to plead, which way I plead, guilty or not guilty. So, I assumed he was the judge.

Q All right. What did you do when he asked you this?

A Well, I'm not sure how I pleaded. I believe I pleaded guilty though, and, no, I really can't say.

Q Do you know what—

A (Int'g) I don't know whether I pleaded guilty or not guilty.

Q All right. Let me ask you this question, what did they say you had done wrong, what were you supposed to have done?

A Violated a code in the—in the Fish and Wildlife Code Book, that it's illegal to fish within six hundred feet of another boat.

MR. BRADLEY: I'll object to that answer.

MR. CRANSTON: I see. All right. Did you explain to the judge when you were before him what the circumstances of the situation were?

A Yes, I told him.

Q What was your explanation?

A That we had gotten—the rip had come on us. These rips move pretty fast and I didn't see it coming and neither did the other fellow and it just sucked us right on in and together, why, [8] our boats—I was down at one end of the nets and his nets was passing me up and of course, the cork lines were all ripped in together and the fish were hitting it and tying them up and we had some time getting them out. In fact, it took several hours to clear them.

Q And what was finally done with the matter?

A The judge said he was a fisherman and had been in the same circumstances many times and the case was, I don't remember whether he gave me a fifty dollar fine—

MR. BRADLEY: (Int'g) I object to—

MR. CRANSTON: (Int'g) That's all right, just keep testifying.

MR. BRADLEY: (Cont'g) —the judge's disposition.

THE WITNESS: The judge's disposition?

MR. BRADLEY: I'm just objecting for the record.

THE WITNESS: I see.

MR. CRANSTON: Would you just say what you know, continue testifying to what—

A (Int'g) The judge said the case was dismissed, that I wasn't to be fined.

Do you have the record of that deal to see whether I did have a fine or not and whether he dismissed it? I know I didn't pay anything.

MR. CRANSTON: All right. Would you mark this letter dated July 18th, 1957, addressed to Harley Adams, Coho, Alaska from Charles F. Connelley, Junior, Fishery Management Agent, as Defendant's Deposition Exhibit Two, please.

MR. BRADLEY: The government reserves any objections [9] it might have to the introduction of that in trial.

THE REPORTER: Number Two, counsel.

MR. CRANSTON: Yes.

Mr. Adams, I'm going to hand you what has been marked as Defendant's Deposition Exhibit Two and ask you if you recognize this?

A Yes, this is it. This is the one.

Q All right. What is this, what is that Exhibit Two?

A Well, this is the letter that the wardens delivered in person. They said they had sent me one out but I never got it, see. So, I did receive this one, so, I appeared on this date.

Q All right.

A That was supposed to be the twenty-second, I believe it said.

Q This is a copy of the letter you testified to earlier as having been handed you by the wardens?

A It looks like it.

MR. CRANSTON: All right. I have no further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

• • • •

[12] Q So, you were on this rip for some time before?

A I'd say probably between three hours, about that time.

Q So, they could have initially observed you somewhat much further down the rip?

A Well, no, they couldn't see what I was doing.

Q Well, they could have at least seen your boat initially?

A They could have seen the boat but they couldn't tell until they got within a few hundred yards that we were tangled, you know. Of course, the boats weren't together. The nets were together.

See, we've got nine hundred feet of net on there, six hundred fathoms. I mean, just one hundred fifty fathoms, nine hundred feet.

Q At least the first time that they observed your boat you might have been much further down the rip?

A We could have been, depending on which way the tide was going.

• • • •

[13] Q In 1964 to the present date it's fair to say that you did not notice enforcement boats in Cook Inlet?

A I didn't have any encounters with them myself.

Q You didn't notice them in the inlet?

A No, I didn't notice them.

• • • •

[2] JIM H. BRANSON

having been first duly sworn on oath, testified as follows;

DIRECT EXAMINATION

BY MR. CHARNEY:

• • • •

[5] Q Have you ever seen Canadian boats fishing in Cook Inlet?

A Yes.

Q Did you see them and realize that they were Canadian while you were in enforcement?

A Yes, I did.

Q Were you patrolling at the time?

A Yes.

Q When was that?

A It would have been either in late June or early July of 1952.

* * * *

[6] A Not that day, and I don't believe there had been any bad weather for the preceding several days.

Q What was your purpose for being there when you saw this ship?

A I was enroute on an aerial patrol from the Homer-Seldovia area towards Kenai and Kalgin Island.

Q In the air?

A In the air, yes.

Q Do you know where the ship was located?

A It was roughly in the middle of Cook Inlet at about the latitude of Ninilchik.

Q How do you know this?

A Well, visibility that day was such that we had good visual location of our position.

Q Was it more than three miles from shore?

A Yes.

Q How do you know this?

A Well, it was pretty well out in the middle of the inlet, and the inlet there is much over six miles wide. It must be almost thirty miles wide.

MR. CHARNEY: I have here U.S. Coast and Geodetic Chart No. 8502, 16th Edition, dated July 4th, 1970, corrected by notice to mariners 27/70. Would the court reporter please mark this as Exhibit 1 to the deposition?

(Deposition Exhibit 1 marked.)

[7] BY MR. CHARNEY:

Q I show you now, Mr. Branson, Exhibit No. 1 to this deposition, which I've previously identified, and does

it show the area on which you located that Canadian vessel?

A Yes, it does.

Q I give you a red pen and ask you to mark with an "X" the location of that vessel as you saw it.

A It was well offshore, pretty much in the middle of Cook Inlet at about the latitude of Ninilchik, in this (indicating) area roughly.

MR. CHARNEY: The witness has put a red circle, a large red dot, between the "E" and the "T" in "Inlet" of "Cook Inlet." I'll mark that as "A" and put an arrow to it.

BY MR. CHARNEY:

Q Did you see that ship at any other locations?

A I don't recall that I did, no.

Q Did you do anything about the presence of that ship?

A No, except to note it either mentally or in my field diary, I can't remember which.

Q Did you look for your field diaries?

A I searched for my field diaries for that period and have been unable to find them.

Q What did you do?

A We continued the patrol, and the next time I communicated with the Anchorage office, I asked them what the jurisdic- [8] tion, or what the deal was with Canadians fishing in the lower inlet.

Q And what were your instructions?

A My instructions—

MR. CRANSTON: My objection is as to hearsay on this. You can go ahead with it. I'll just note the objection.

BY MR. CHARNEY:

Q Were you given instructions as to what to do with this vessel that you saw?

A No, I was told, I'm sure, not to do anything about this vessel, and I was given to understand that Canadian vessels fishing more than three miles offshore in the inlet

were normal, and not to be bothered. They weren't in violation.

Q And this is the way you conducted your patrols in the inlet after that?

A Yes.

Q These were official instructions to you?

A Yes.

Q Do you know a Howard Baltzo?

A Yes, I do.

Q Might he have been familiar with this incident?

A Possibly he may have. He was stationed in Juneau at the regional office at that time.

Q Was he your superior?

A No, he was not my direct line superior.

[9] Q But did he have supervisory powers over you in your enforcement activity?

A Only indirectly.

Q What was his position in relation to yours?

A He was part of the regional office staff, and I cannot recall just what job he had at the time.

Q How about a Mr. Swanson?

A Mr. Swanson was in the enforcement division as assistant chief, and did have direct line supervision over me.

Q Might he have known of this incident?

A It's possible.

Q Do you know if the other enforcement agents were informed of this position as to foreign vessels in Cook Inlet?

A I'm quite sure the agents in Anchorage with whom I worked were aware of this position.

Q Were these instructions ever changed?

A No.

Q Do you recall ever seizing or boarding an American vessel inside Cook Inlet below Kalgin Island, that was more than three miles from shore?

A I don't believe I ever made any arrests below Kalgin Island, but I did board gillnet vessels in the area below Kalgin.

Q What do you fish for with gillnet?

A Salmon.

Q Prior to your sighting of that Canadian vessel, had the [10] question of the limits of your jurisdiction from the shore ever arisen?

A I don't recall if they had.

Q Do you recall being given any guidance on this?

A I don't recall any specific guidance.

Q Were you ever told that all of Cook Inlet were waters of Alaska?

A No.

Q Was it standard procedure to check with your headquarters in cases such as the Canadian vessel?

A In any case where I had a question of jurisdiction or how I should conduct my duties, yes.

Q I'm going to go on to other areas, such as Shelikof Strait and Bristol Bay.

MR. CHARNEY: I intend by this not to waive our objections as to its relevance, but since we are pretrial on discovery and don't know what the decision of the court will be as to its relevance, I'm going to ask these questions against any contingency that might arise.

MR. CRANSTON: Just for the record, I don't stipulate to any waiver. I will reserve any objection I might have, or any argument I have as to what the effect of these questions are for a later time.

BY MR. CHARNEY:

Q Are you familiar with Shelikof Strait?

[11] A Yes.

Q Have you ever seen foreign vessels fishing in Shelikof Strait?

A Yes, I have.

Q Do you recall arresting or seizing foreign fishing vessels fishing more than three miles from shore in Shelikof Strait?

A No, I never have.

Q What are the instructions as to jurisdiction over foreign vessels in Shelikof Strait, what have they been in the past, as you've known them?

A Well, currently, the instructions are to seize any foreign vessel fishing within twelve miles of either shore of Shelikof Strait, except for Canadian vessels fishing

for halibut, which can fish up to within three miles of either shore. Prior to 1967 in the contiguous zone law, it was three miles for all foreign vessels.

Q And you have seen vessels fishing in these areas?

A Yes.

Q Have you seen foreign vessels fishing roughly in the triangular area of a line from Cape Elizabeth, to Cape Douglas, to the Barren Islands, enclosed within that triangle?

A I've seen Canadian halibut boats in that area, as well as in other areas of Shelikof Strait, and I've seen Russian trawlers fishing in that particular area.

[12] Q Was this on patrols?

A Yes.

Q And did you leave them alone, or did you—

A Yes. The Russian trawlers, in the specific case I recall, were approximately six to seven miles offshore. This was prior to 1967.

Q Are you familiar with Bristol Bay?

A Yes.

Q Have you seen foreign vessels fishing in Bristol Bay?

A Yes, I have, of four nations, the Soviet Union, Japan, The Republic of Korea, and Canada.

Q How close are they allowed to fish without being—

A Dependent upon the fishery and nationality, it's either twelve miles or three miles offshore.

Q And you've seen them fish near those limits?

A Yes, I have.

Q Was this on patrol?

A Yes.

Q And have you left them alone?

A Yes.

Q Would you consider Bristol Bay a traditional fishery of foreign vessels?

A I would consider it so in the case of the Japanese, probably.

Q Do your patrols take you more than three miles from shore [13] outside of any bays, inlets or straits?

A Quite regularly.

Q Do they take you more than twelve miles from shore?

A Frequently.

Q While in those areas, do you have any interest in fishing vessels?

A If I understand, your question is in those areas more than twelve miles offshore?

Q Yes.

A Yes, depending—we're very interested in all fishing activity out to distances of as much as 100, 150 miles from shore.

Q What for?

A In some cases, we have treaties or agreements with the nations involved in these fisheries, governing that particular fishery, or area.

Q In other cases?

A In other cases, we are trying to establish what the fishing pattern is, the catch, the methods used, as much as we can about that particular fishery.

Q Is this an official activity?

A Yes.

MR. CHARNEY: I'd like to offer Branson Exhibit No. 1 into the record of this deposition. I have no further questions.

CROSS EXAMINATION

[14] BY MR. CRANSTON:

* * * *

[39] Q Just pursuing it a little further, then, suppose we toss in the period after statehood. Would you answer still be the same?

A I'm not sure whether the Japanese fleet that caused such a furor in the early '60's got up that far or not. They were in Shelikof, or close to it.

Q Since that time, the Shelikof Strait incident in 1961, I believe, isn't that the time?

A It must have been approximately that.

Q Have the Japanese entered either Shelikof Strait or Cook Inlet?

A I have seen Japanese ships in transit through Shelikof Strait, but never in Cook Inlet. This is Japanese fishing ships, particularly—specifically.

Q I see. In transit, you mean from what, Bristol Bay and heading for the gulf, something like that?

A I have no idea where they came from or where they were going, but they were in Shelikof Strait traveling.

Q You are not aware that they ever entered the area bounded by a line from Cape Douglas through the Barren Islands on to Cape Elizabeth?

A I've never seen one in there.

Q And what about vessels of any other nation?

A North of a line between Cape Douglas and the Barren Islands, [40] no.

* * * *

[42] Q Have you seen ships of any other nationality?

A The Canadian fish regularly through Shelikof Strait for halibut.

Q I see. All right, but now, again, this instance that you referred to in the Russian event is the only incident involving a non-Canadian halibut vessel of which you are aware, is that correct, in the area north and generally west of Shuyak Island?

A That's the only time I recall having seen a foreign vessel fishing other than a Canadian.

Q Have there been any reports of which you are aware made by others?

A I've had reports of Japanese and Russian fishermen in that area from members of the American fishing fleet. I've never been able to verify them.

Q Have you memorialized these reports in any form of document in writing?

A I'm not sure. We may have one or two of the incidents.

Q They would be on file in your Kodiak office?

A They should be.

[3] JARED CARTER,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q State your name, please?

A Jared G. Carter.

Q What is your address?

A 3539, Nottingham Street, Arlington, Virginia.

Q And your age?

A Thirty-six.

Q And what is your occupation?

A I am the Deputy Director of Ocean Affairs, Department of Defense.

Q Do you have any connection with the Legal Adviser's office to the Secretary of State?

A Not now.

Q I see. Would you describe to me your past Government occupations, please?

A Within the last four years I have been most recently the Assistant Legal Adviser for Economic Affairs for about two [4] years, and prior to that I was the Assistant Legal Adviser for Special Political Affairs and before that the Special Assistant to the Legal Adviser.

Q Now, those past three occupations have been—

A In the Department of State.

Q In the Department of State?

A Right.

Q And when you are talking about the Legal Adviser, you are referring to the Legal Adviser of the Secretary of State, is that correct?

A Right.

Q All right. Aside from those three particular occupations, have you had any other responsibilities with respect to the Federal Government?

A I was a Supreme Court Law Clerk after law school, 1962, 1963 and I was in the military service from 1956 to 1959.

Q Where was your legal training?

A Stanford University.

Q You have your Bachelor of Laws Degree from Stanford?

A Correct.

Q Or J.D., as it may be?

A I haven't spent the $50 for that J.D.

Q Now, on July 3rd, 1969, what was your occupation?

[5] A I was the Assistant Legal Adviser for Special Political Affairs.

MR. CRANSTON: I would like to have this document which is a letter dated July 3, 1969, from the Legal Adviser of the Secretary of State to Mr. Shiro Kashiwa, Assistant Attorney General, marked as Deposition Exhibit 1, please.

(Letter marked Defendant's Deposition Exhibit No. 1 was marked for identification.)

BY MR. CRANSTON:

Q All right, I am handing you what has been marked as Defendant's Exhibit 1 for the purposes of this deposition. I am going to ask you to look it over and tell me if you are familiar with that document?

A Yes, I have some recollection of it.

Q All right. Would you indicate to me what the basis of your familiarity with this letter is?

A This dealt with a subject matter that fell within the province of my office as Assistant Legal Adviser for Special Political Affairs, so my office prepared this letter for the signature of the Legal Adviser in consultation with him.

Q So, when you speak of "your office," you are telling me that this letter was prepared under your supervision or more [6] specifically, was it prepared by you?

A I can't, with any assuredness, answer that question for you. What I can say is, it certainly had my detailed

examination and, undoubtedly, editing before it went out. To the best of my recollection, the actual work on the letter was done, not by me, but by another person who worked for me.

Q I see. Could you tell me who the name of that person would be?

A Peter Wallin or Pat King. I had two people working for me who were both working on this general subject.

Q How do you spell Wallin's last name?

A W-a-l-l-i-n.

Q And the other individual was Pat—

A King. Patricia King.

Q That is a girl, then, I take it?

A Right. She was a summer intern from Harvard working with us that summer.

Q Can you tell me where Peter Wallin is located at the present time?

A He is working in Los Angeles with some kind of a publicly funded—I think it is an OEO Legal Services operation, but I wouldn't be positive.

Q What would his age be?

[7] A Twenty-eight, twenty-nine. Maybe thirty. I just really don't know. But he was a fairly young guy, two or three years out of law school, at that time.

Q He is a graduate of law school and has a law degree?

A Right.

Q Did he have any middle initial or any other identification that you might be aware of?

A I don't remember. It has been two and a half years since I dealt with him and I just don't remember that. But that information would be available in the Legal Adviser's office.

MR. CRANSTON: Mr. Charney, is there any objection to my obtaining all the possible information I can respecting Peter Wallin?

MR. CHARNEY: I think we can locate him.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q Now, could you give me some indication of where Patricia King might be at the present time?

A The last I talked with her, she was a Special Assistant to the Chairman of the Council on Equal Employment Opportunity here in town. That may not be the correct name of it.

[8] Q Did she have a law degree?

A She did not at that time. She had completed two years of law school and was in the course of her third year.

Q Do you know if she does now?

A She does now.

Q And is her capacity as Special Assistant to the Chairman of this Council a legal position?

A No, I don't believe so, but I am not intimately familiar with how the Council operates.

Q But she is employed by the Federal Government so far as you are aware at this time?

A Right.

Q And Mr. Wallin would also, so far as you are aware, be employed by the Federal Government?

A I just don't know how those operations work. My guess is now, that there is some Federal funding but it is not a Federal Government employment. I just don't have any knowledge of it.

Q With particular reference to Exhibit 1, did you participate in any of the research which formulated the background for that letter?

A No.

Q Did you—

[9] A I reviewed the work but I didn't do any research.

Q What was the nature of the work that you reviewed?

A Drafts of the letter and then discussing their sources for making the assertions.

Q Did you discuss any sources other than those which are discussed in this letter?

A Yes.

Q And what other sources did you discuss?

A We did some work, I forget how much earlier, but somewhat earlier than this letter in conjunction with answering some interrogatories and requests for admissions in this same case. And we did some work in conjunction with that.

Q But so far as the documents and public records which formulated the conclusion of this letter, specifically, do you know if any other matters were considered except the Juridical Regime, the letter written by Abram Chayes and the United States note of March 6, 1958, which is reported at 38 Department of State Bulletin, 461?

A So far as the Juridical Regime is concerned?

Q Well, so far as the documents which form the basis for the conclusion of this letter. Were these the three items which were considered by the Legal Adviser's office in reaching the conclusion that was reached?

[10] A There were certainly others, like the Convention on the Territorial Sea and the Contiguous Zone and Whiteman's Digest and other legal sources that were readily available to my lawyers which were also considered. So, if your question would exclude the normal kind of sources that are available to a lawyer, then, my answer would be no, because those kind of sources were considered. Also—

Q Let me just interrupt at this point. By "Whiteman's Digest," to what do you refer?

A There is a publication called "Whiteman's Digest" on international law that is edited by Marjorie Whiteman who was formerly an employee of the Legal Adviser's office. It is now about a 14-volume work.

Q I see.

A And it contains materials on almost any issue of international law.

Q Would it have contained any material specifically with reference to activities of the United States in the waters of Alaska and specifically with regard to its activities in Cook Inlet?

A I doubt it, but I don't know the answer to that. If we had not had any incidence in that area, then

there wouldn't be any material in it, because what it builds on is the record [11] of dealing with past incidences and the conclusions that were reached in regard to those and then published in a digest of those experiences.

Q Would it be normal for Whiteman's Digest to contain references to such matters as activities of the United States Fish and Wild Life Service in a particular area?

A Probably not, unless they were the source of an international dispute of some kind.

Q All right. I interrupted you. You were continuing on.

A Right. In preparation for the interrogatories and a request for admissions, I also recall that my office levied a request on other sources, the Historical Office in the Department and the Geographer's Office to consider those requests for interrogatoriees, and I don't have any knowledge of what those offices may have examined in detail in preparing their answers. But, we did rely to some extent on their examination, so I can't tell you that the final answer depended only on certain documents.

Q Now, with reference to the preparation of the answers to the request for admission and interrogatories, were the same individuals within the Legal Adviser's office responsible for preparing those answers? I refer to Peter Wallin and [12] Patricia King.

MR. CHARNEY: At this point, I would like to state an objection that we are getting into privileged material and that is of attorney-client correspondence and work in preparation for these answers to interrogatories. I will for the moment allow this witness to answer these subject to my objection, of course, until we get to a point where I feel that I want to invoke the privilege or refuse to allow him to disclose things that I would consider prejudicial to us or in balancing the values I would rather he did not answer.

MR. CRANSTON: But you are allowing him to answer this?

MR. CHARNEY: At this point, I will.

THE WITNESS: Yes, to the best of my recollection, they worked on both.

BY MR. CRANSTON:

Q So far as you are aware, these two individuals also were responsible for the preparation of those answers, is that correct?

A Yes.

Q Is there anyone else with whom you are aware who may have also been involved in the preparation of those answers from the Legal Adviser's office?

A As I recall, the Deputy Legal Adviser, Murray [13] Bellman, was really performing more of the supervisory functions on those.

Q Can you spell his name?

A B-e-l-l-m-a-n.

Q And his first name is Murray, M-u-r-r-a-y?

A Yes.

Q Do you know where he is?

A He practices law here in town but I couldn't give you the name of the firm.

Q Now, just so I fully understand the relationship between the work which resulted in the answers to interrogatories and the requests for admissions, it is your testimony that that research, and information derived from that research, also aided in the formulation of the conclusion contained in the letter of July 3rd, 1969?

A Yes.

Q Now, are you aware of what particular information resulting from the research with regard to the interrogatories and requests for admission was used to reach the conclusion contained in Exhibit 1 to this deposition?

A Not with any degree of certainty. I do know that the materials quoted here, that is the reliance on the study by the United Nations Secretary General, and I believe, [14] though I am not confident of this, that that research also turned up the example of the Great Bay case. Also, it revealed a certain absence of information which under the test enunciated here is very significant to the conclusion. So—

Q By "absence of information," could you detail that with a little more specificity? Information as to what and where?

A The absence of the United States making certain assertions of jurisdiction over the area and the absence of any indication of foreign governments' attitude about the area.

Q I see. Do you know with any particular detail what sources available to the United States were researched in order to prepare the answers to these interrogatories and requests for admissions?

A No, I don't. I can assume that Whiteman's Digest and these other sources that lawyers look at were gone into in considerable detail because these were competent people. But beyond that, I don't really have any specific knowledge.

Q And you feel that perhaps Peter Wallin and Patricia King would have this information, if anyone does?

A My guess is that they don't recall too much about it right now, but if anybody does recall exactly the steps [15] that were taken, probably they would.

Q Would you be able to tell me if in preparation for this letter, which is Exhibit 1 to this deposition, and any of the material upon which this letter was based during your period of responsibility with the Legal Adviser's office, the Archives of the United States were completely searched in order to determine the activities of the United States in Cook Inlet and the disputed areas?

A I don't know for sure, but I don't think so because I remember that we answered some of the interrogatories by saying that that would require complete Archival research, which we weren't going to undertake. So, from that fact, I inferred that they weren't comprehensively examined.

Q Do you know or are you aware of any portions of the records contained in the Archives of the United States and any Federal record center which were searched and relied on in order to formulate a basis for the conclusion of this letter?

A I don't. What the Historical Office did or what the Geographer did in that regard, I just couldn't testify to because I don't know.

Q And you feel that if anybody, again, would know the answer to that question, it would most likely be Peter Wallin and/or Patricia King?

[16] A I doubt that they would know the answer to that question because I am sure they didn't do any of that research and they probably just to a certain extent accepted the conclusions of people in other offices rather than going into too great detail about what they did or didn't do in arriving at them.

Q How could I or who would I go about to run down the amount of research that was done and who did the research in order to form the basis for the conclusion in these letters insofar as the Archives and historical records are involved?

A Let me confer with my counsel a moment.

MR. CRANSTON: Yes.

(Discussion off the record.)

THE WITNESS: The only way I can think of is to go to the Historical Office and the Geographer's office and ask them.

BY MR. CRANSTON:

Q All right. Now, by "Historical Office," do you mean the Historical Office of the Department of State?

A Right.

Q And who in the Historical Office would be the person I should go to?

A If I were you, I would start with the boss, whoever he is, and ask him. I just don't remember who did this work [17] in the Historical Office.

Q All right. What was the other office?

A Geographer's.

Q Is that also the Geographer's Office contained within the Department of State?

A Right.

Q Is that the office wherein the Geographer of the United States is located?

A I don't think so. He must be over in the Interior somewhere.

Q I see. But there is a Director of the Geographer's Office here, or what would the position be?

A That is right. The situation there is that the fellow who used to hold it during this period of time has retired.

Q What is his name, do you know?

A Edsel Pearcy; E-d-s-e-l, I think. P-e-a-r-c-y or c-e-y.

Q He is retired. Do you know where he is located?

A He teaches out in some state college or city college in the L.A. area.

Q You know nothing else regarding the name of the college where he might teach. You say it is a teacher's [18] college?

A I am sure Fred Hodson, the present Geographer, would know where he is.

Q Spell that man's name, please.

A I thing it is—I can't remember the guy's name. It is in the phone book. But the present Geographer, whoever he is, and that is ascertainable from the telephone book here of the Department of State.

Q He would be the Director of Geographer's Office for the Secretary of State, the present occupant of that office?

A Right.

MR. CRANSTON: Mr. Charney, is there any objection to making these individuals, if they are employed by the Federal Government, available to the State of Alaska in order that I may pursue the matters with them which have been discussed in this deposition?

MR .CHARNEY: I haven't thought about it extensively. My initial reaction is yes, but I will think about it further.

MR. CRANSTON: We will discuss it, then. There is nothing we can make a record on at this point?

MR. CHARNEY: No.

BY MR. CRANSTON:

[19] Q Did Mr. Meeker, himself, whose signature appears on this letter, participate in any of the actual work which was done in order to finalize this letter?

A All I can do is answer on the basis of my familiarity with three years of working closely with him and because I don't have any specific recollection of how this letter was approached by him, I would say that he would have required detailed explanation of what was here and why it is here and asked a series of questions about it and probably have done a small amount of editing of the letter before signing it; but that he would not have gone back and done any research on the question, but rather would have accepted the basic work done by the people in the office after talking with them awhile.

Q Did he question you at all with respect to this letter?

A I say I don't recall specifically our talking about this letter, but I am sure he probably did. I probably went into his office with Wallin or King, whichever one had the most details on it, and we probably sat down and talked about it for fifteen minutes.

Q Apart from your testimony now, you cannot recall specifically what may have been discussed or you can't even [20] remember if, in fact, such a discussion took place?

A No, I cannot.

Q I see. If he did not discuss the content and conclusion of this letter with you, Peter Wallin or Patricia King, is there anyone else with whom he may have discussed it?

A Well, he may have talked to one of the deputies when none of us were present.

Q This would most likely have been Murray Bellman?

A Yes.

Q But you are not aware that Mr. Bellman did any independent research of his own, are you?

A No, I am not aware.

Q Did you think he did?

A I doubt it. He had a number of people to supervise and probably did not go out and do any separate, independent research.

Q So, in effect, actually, Mr. Meeker's work with regard to this letter is simply to determine in his own mind what was done and most likely to conclude that what was done in its preparation was sufficient and that it was worded the way he would want to have it worded and then he signed it, is that about it?

A I say I don't know, but my guess it that that is [21] probably about right. He may have at some time in his career in the Legal Adviser's office been a real expert on historic waters for all I know. I don't know whether he did anything different, but that would be the normal course of how the Legal Adviser would deal with this kind of a problem.

Q But you aren't implying he was an expert on historic waters?

A No, no.

Q He is in Rumania now, is that correct? He is the Ambassador to Rumania?

A Yes.

Q All right. We have talked about interrogatories, and there have been several interrogatories or sets in this case, and are the interrogatories to which you refer ones served by the State of Alaska which contained such questions respecting what would be done if foreign vessels should appear in Cook Inlet or if foreign aircraft should appear off the air space of Cook Inlet. Do you recall specifically what particular interrogatories you were referring to?

A I think there was a set of six requests for admission and twenty interrogatories. Now, they may have had those questions in them but I doubt that the State Department as contrasted to, say, the Coast Guard or the Navy or the Air [22] Force would have answered those specific ones that you are referring to.

Q Just to identify them with a little more particularity, do you recall any of the questions that were contained, say, in the requests on one hand and the interrogatories on the other?

A There were a number of questions having to do with the headland to headland whether jurisdiction had been exercised over the waters inside the closing line

from headland, and questions as to what the United States considered to be the closing line in that bay.

* * * *

[23] Q Is there a differentiation in the file in the Office of Legal Adviser between material contained in it which was not used to respond to this Exhibit 1 to this deposition and material contained in it which was used to respond to any request for this letter? Do you follow my question?

A No, I don't understand what you mean by "differentiation between."

Q I am trying to break down any possibility of distinguishing within that file as to material which was used to form a basis for Exhibit 1 to this deposition and material which was not used to form a basis as Exhibit 1 to this deposition. Was there such a differentiation? I can't make myself clearer.

A Yes, I think I get the thrust of your question, and I will just say that to my recollection there is no conscious sub-filing on the various parts of the case over its history within that file, and that by looking at an index of it, you wouldn't be able to say that this or that was relevant to one or another part of the history of the case. As a matter of fact, it is a pretty sloppy job of filing that was done, not [24] only in this case but in other subjects. So, it is very hard to give you an answer other than, no, there was no differentiation made.

* * * *

[29] Q In the drafting of this letter which is Exhibit 1 to this deposition, did you review independently the conclusions of Mr. Chayes in his letter of May 3rd, 1962?

A I read his letter and the letter coming in to him. I didn't do independent research to determine whether he was right or wrong. I just accepted it.

Q All right. Did you discuss that letter with either Mr. Chayes or anyone in the Office of the Legal Adviser who had [30] previously been with the office who may have had any responsibility for that letter?

A I don't recall my discussing it with him.

Q Do you think that anyone else under your supervision or who had responsibilities to the Legal Adviser did discuss it?

A I don't know. It would have been normal and reasonable to have gone and discussed the matter with Ray Yingling who, I think, was still in our office at that time. He wasn't working on this subject matter but he had worked on this subject matter earlier, and whether that was done, I just don't know.

Q Again, if it had been done, would it most likely have been done by Peter Wallin and Patricia King?

A Yes, I think so.

Q To your knowledge, was the letter of July 3rd, 1969, Exhibit 1, disseminated or distributed to any other person, agency, government, what-have-you, except Shiro Kashiwa?

A I am pretty sure a copy would have been given to the Interior Department. Whether it would have been given to anyone else, I don't know. But the normal procedure would be to give a copy of the letter to whatever Government agency has an interest in the subject. They are affected by this kind of [31] conclusion.

Q Would it be the normal procedure to distribute a copy of this letter to any other person or entity, including governments apart from agencies of the United States?

A No, unless they asked. If they asked we would give it to them.

Q Would it in the normal course of events have been sent or distributed to any foreign government?

A No.

Q Who in the Legal Adviser's office or within the Department of State would know the persons, agencies and governments to whom this letter has been distributed, if it has?

A I don't know. Probably no one. If I had been in my office and anybody had asked me for a copy of it, I would have sent it to them and I would not even have made a record of it, probably.

Q All right. If it had been sent, say, to a foreign government, would it be most likely that either a record

of the request, say, in the form of a letter or a record of the distribution of the letter, Exhibit 1 to this deposition, would be made?

A No. Most likely what would happen is some young [32] officer from the embassy that you saw once in a while would be talking with you and say, what has been happening in such and such an area, and you might in the course of conversation say you had written an opinion letter on such and such a topic and he would ask you verbally for a copy and you would give it to him.

Q But you recall having had no such conversation with respect to this letter?

A I can recall no such conversation.

Q And is it most reasonable to assume there was no distribution of this letter to any agency other than Interior?

A That would be the most reasonable assumption, yes.

* * * *

[3] ABRAM CHAYES, having been sworn, in answer to direct interrogatories by Mr. Cranston, testified as follows:

Q Will you state your name, please?

A Abram Chayes.

Q Your address?

A 3 Hubbard Park, Cambridge, Mass.

Q Your occupation?

A I am a Professor of Law at Harvard.

Q Your age?

A 49 years old in a month.

Q Now, have you ever been employed by the offices of Legal Adviser to the Secretary of State?

A I was that for three years.

Q What years?

A February, 1961, to January of 1964.

[4] Q I am going to hand the reporter a letter dated May 3, 1962 from Abram Chayes, the Legal Adviser of the Department of State, addressed to Frank J. Barry, Solicitor of the Department of the Interior.

A Yes.

Q I ask that it be marked as Exhibit 1 to this deposition.

MR. CHARNEY. No objection.

(Photostatic Copy of Letter to Frank J. Barry, Solicitor of the Dept. of Interior, dated May 3, 1962, a 3-Page Document, Signed, "Sincerely yours, For the Acting Secretary of State: Abram Chayes, the Legal Adviser," marked Defendant's Exhibit 1 and Received in Evidence.)

THE WITNESS. Is this the same letter that accompanied the subpoena?

MR. CRANSTON. Yes, yes.

Q Now, I am going to hand you what has been marked Exhibit 1 to this deposition and, as I stated before, it is a letter dated May 3, 1962, from you to Mr. Barry, and I ask you if you recognize this letter.

A Yes. That appears to be a copy of the letter that I sent in my official capacity as the Legal Adviser of the Department of State.

Q Who did the research and the preparation necessary for the writing and the drafting of this letter?

A I believe the letter that we wrote refers to a letter [5] from Mr. Barry dated April 17, 1962, and that was an incoming letter that is not available to me now.

This letter must have come to my desk, although I do not have any recollection of it.

I assigned the matter to Mr. Yingling, who was the senior attorney, I think he was an Assistant Legal Adviser, in charge of special political affairs and that included the law of the sea matters.

He was a long-time member of the Legal Adviser's Office and had specialized in the law of the sea matters for many, many years, and I did assign this matter to him for investigation.

Q All right. Did you do any of the research or the other work necessary in order to reach the conclusions reached by this letter?

A I did not do any of the basic research.

I had a conference with Mr. Yingling before he began work and reviewed the issues and outlined the scope of the research that might be necessary.

Then, since I was the head of the office, most of the work had to be delegated to subordinates and Mr. Yingling carried out the work and prepared a draft of this letter.

There was undoubtedly a background memorandum, although I do not have any recollection of the back- [6] ground memorandum.

I met again with Mr. Yingling to review his data—draft—and I questioned him about the scope of the research and what he had done.

I was satisfied that the draft was a proper expression of our views and I signed the letter.

Q Do you recall any directives written, or oral, that you may have given Mr. Yingling relative to what he should research in order to draft this letter?

A I obviously wanted him to look into the cases as far as the rules of the law of the sea go.

He knew as much about them as anybody, and, of course, I knew something about them myself.

I asked him to look into the records of the department, and other records that might show assertions of jurisdiction and sovereignty in the Cook Inlet.

Now, over what period of time that was, I am indefinite but the letter reflects that he looked into the National Archives, and although I do not independently recall telling him to go to the Archives—in fact, perhaps I do, but I am not too sure of an independent recollection of telling him to go there.

But I am sure that he had done a historical survey that would have been sufficient to disclose the factual basis for our opinion.

[7] Q When you speak of the record of the department—or records of the department, you refer to the Department of State?

A Yes.

Q Do you recall having instructed him specifically, with respect to a search of the records of any other department of the Government?

A No, no.

My general instructions were to make a search of the historical records of the United States to substantiate—form a basis for an opinion of the status of the Cook Inlet as historic waters.

Q Do you recall having—receiving any communication from Mr. Yingling or any other person under your supervision or his supervision relative to what records of the Government, either in the State Department or other departments, were in fact searched?

A Again, I have to say I do not have any independent recollection.

I am sure that Yingling reported to me periodically with word as to what he was doing; it was not too long it was a period of two or three weeks; a backup memorandum would have accompanied this letter.

As was always the case, when we prepared an [8] Opinion Letter of this kind, it was accompanied by a backup memorandum.

It would have given in detail, in some detail, the scope of the research.

Q Was it the policy of the legal advisor's office to require a backup memorandum relative to the research done in the case of a letter or an opinion request, such as this?

A I do not recall it as a formal policy. I think it was always the case that a matter of this kind, involving the position of the United States on an important issue, would have a backup memorandum analyzing in greater detail than was appropriate for general letters—the sources of the analysis and so on.

Q Do you recall specifically having seen this type of a backup memorandum?

A As I said, I do not have any independent recollection of that, but I am confident that there was one.

Q If a backup memorandum were prepared and submitted, would it normally be included within or retained within the file that would be in the legal adviser's office with respect to this particular opinion?

A I think that would—that would be for a while. At certain times, the record policies of the department

[9] would take it out and put it someplace, but it should be in the department now and available to the operations of the department.

I am sure that you could find this memorandum somewhere.

Q So, then, to sum up at this time, with respect to any written communications that you received prior to the drafting of this letter, the only one of which you are aware is the letter that you received from Mr. Barry requesting an opinion?

A Well—I am only aware of it for it was referred to in this letter, but I am confident that there was a backup memorandum or it may have had appendices and so on.

Usually, our preparation was pretty thorough on that.

* * * *

[32] REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Do you recall specifically whether you, in your preparatory discussions with Mr. Yingling, that you were asked if the records of the Department of the Interior or of Fisheries and Wildlife Service be examined as background material for this letter?

A I do not recall stating specifically that they should examine the records of the Department of the Interior or the records of the Fish and Wildlife Service.

I knew, and we discussed at that time, certain problems raised by the form in which Fisheries and Wildlife regulations had appeared. That was on one or two occasions.

It possibly may have been read as applying beyond the lines that we took to be the limits of the territorial sea.

In that area we discussed the question of how those regulations should have been dealt with.

Now, I guess in the letter what we said was: You fellows know more about this than we do and you deal with them.

In fact, we knew about these regulations and [33] we discussed what their significance was and how they should be interpreted in relation to these questions.

Q Do you think the background memorandum would have discussed this or do you recall?

A I do not recall, but I would think that it very well might have.

MR. CRANSTON: That is all.

MR. CHARNEY: What were your conclusions?

THE WITNESS: It is reflected in the overall conclusions reached by the letter that they did not warrant assertions by Alaska of a claim as historical waters.

We felt that for most of the period, during which Alaska had been the United States, that the regulations were specifically limited to the territorial waters as traditionally defined.

There were one or two regulations where the draftmanship was slightly changed so that it may have been read as applying beyond that, but not necessarily.

When the anomaly was discovered, the regulations were redrafted to make it clear that we were excluding those waters—beyond the traditional limits, so that we felt that regulations, even those doubtful ones; and I do not remember the language anymore—it is [34] intricate.

We felt that even those doubtful ones could be construed as limited to territorial waters as traditionally defined.

If not, they simply represented a drafting error made by someone that was not focusing on this problem, and certainly not an assertion of jurisdiction or sovereignty beyond the traditional 3-mile limit or the Bay—the line enclosing the inner Cook Inlet at the Forelands—the headlands or somethoing like that.

• • • •

[3] Thereupon,

THOMAS J. COSTELLO,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your full name, please?

A Thomas J. Costello.

Q And what is your address?

A Present address?

Q Yes.

A 8421 Southwest, 16th Terrace, Miami, Florida 33155.

Q And what is your present age?

A 50 years.

Q And by whom are you employed now?

A By the U. S. Department of Commerce, National Marine Fishery Service.

Q And what are your present duties?

A I'm a research biologist. I'm presently in charge of the Calico Scallop investigations at the Tropical Atlantic Biological Laboratory in Miami.

Q How long have you been stationed there?

[4] A Since the fall of 1958.

Q And before 1958 were you also employed by the United States Government?

A Yes.

Q And in what capacity and where?

A Prior to that I spent two years at the Bureau of Commercial Fisheries Laboratory in Galveston, Texas. I was the chief of Gulf Fishery Investigations and the assistant chief of Gulf Fishery Investigations, one year each at that laboratory.

Q Then you say you were there from 1956 through 1958?

A Correct.

Q And then before 1956, where were you stationed?
A From 1950 through 1955 I was stationed in Alaska.
Q All right. What were your responsibilities in Alaska?
A For the first year I was the assistant to Burtell Johnson who was the biologist in charge of Bristol Bay and beginning in 1951 through 1955 I was the Fishery Management Biologist in charge of the Cook Inlet District in Alaska.
Q And you were stationed in Anchorage?
A That's correct.
Q Now, was the year 1950 the first year that you had [5] gone to Alaska?
A Yes.
Q In any position of responsibility?
A Yes.
Q Or was it the first time you had been there at all for any purpose?
A Yes.
Q And were you employed with the United States Government before 1950?
A No.
Q What particular type training have you had with respect to your specialty in marine biology?
A Well, I graduated from the University of Washington with a Bachelor of Science Degree in Fisheries in 1949.
Q I see. And did you have any post-graduate training in this area?
A I took graduate work at the University of Washington for the first two quarters of 1950, and since then I have taken graduate work at the University of Miami, 1964 and 1965.
Q I see. Now, focusing on the years 1950 through 1955; commencing in 1950 you say you were under a man who was in charge of the Bristol Bay District, is that correct?
A Just for the year 1950, that's correct.
[6] Q And during 1950, were you concerned completely with activities in Bristol Bay?

A Up until the fall of 1950. I did stop in Anchorage for a brief period, maybe—approximately now—six weeks following the work in Bristol Bay to help out in Anchorage, but I had no real official capacity. That is to say, I worked and helped put together the air base and so forth there.
Q I see. Now, before the fall of '50, when you went to Anchorage, is it a safe statement that you did not concern yourself at all with any activities in Cook Inlet or with respect to Cook Inlet?
A That's correct.
Q Then, in the fall of '50 you went to Anchorage to help with an air base construction. Was that Elmendorf?
A No, that was our own air base at Hood Lake. I was working for the government at that time.
Q During that period, did you concern yourself with any of the normal activities of your department in Cook Inlet?
A No.
Q When did you first become involved with the activities of the Cook Inlet District?
A The spring of 1951.
Q And you state that you were the management biologist?
[7] A My title was Fishery Management Biologist in charge of the Cook Inlet District.
Q Now, who was your immediate superior?
A Mr. Dick Schuman who was stationed in Juneau, Alaska.
Q Am I correct in stating he is probably deceased?
A That's right. He was killed in an aircraft accident.
Q And other than Mr. Schuman, do you know who was next in chain of command?
A Mr. Howard Baltzo. He was the assistant regional director.
Q And during this time was Clarence Rhode the director?
A That's correct.
Q Did you have any persons who were under your supervision?

A Yes, a number of persons. In the summertime, for example, I had—and this is approximately the maximum —were about 24 people that worked for me; stream guards and so forth.

Q Now, the stream guards, I would assume, confined their activities mainly to the shore and perhaps a few hundred yards offshore, did they not?

A Primarily.

Q Did you have any persons who worked farther out in the Inlet who were under your supervision, those who would [8] normally patrol the inlet on aircraft or boats?

A Not—well, I must explain. I can't answer your question yes or no.

Q Yes, please explain.

A I had no direct jurisdiction with respect to enforcement for 1951, 1952, or 1953. I was strictly the management biologist in charge of the district. In 1954, sometime during that year, and for the time I was there in 1955 I was actually placed in charge also of enforcement in the district. So for the first three years the answer is no, I didn't have anybody working in the middle of the Inlet or anybody like that, but for the last approximately year and a half, and I'm approximating now, I had people. For example, Robert Mahaffey was the person I designated as primarily in charge of enforcement under me.

Q Am I correct in assuming that he's presently deceased?

A That's right.

Q For the first three years then you had no responsibility for enforcement. Do you recall, however, any of the individuals in the district who did have responsibility for enforcement during that time?

A Well, of course, I knew all of them because we worked in what might be called a coordinated effort. That is to say [9] we informed each other. We were in the same set of offices, Holger Larsen and—

Q I wonder now if you could without going into any detail about them just give me the names of those persons

who were involved in enforcement during your first three years?

A Well, Holger Larsen was in charge of enforcement. Dave Collins who drowned during the period was also working for him. Jim Branson worked for a time in the district. Of course, there were a variety of agents that came up and worked during the summertime for enforcement from the States. These were game enforcement agents that were temporarily assigned to Alaska.

* * * *

[12] Q All right. In carrying out your duties, generally, during the time you were on the Cook Inlet District, did you rely on any written directions or instructions from anyone?

A Well, of course, we used the regular Cook Inlet regulations which we actually formulated and wrote so we were making reliance on steps that we composed ourselves.

Q Were these the regulations that were promulgated under the Fisheries Act of 1924?

A Right, the White Act. Right.

Q You relied on those primarily for direction with respect to the laws you were going to enforce, is that correct?

A That's correct.

* * * *

[15] Q All right. Just a prefatory comment: I'm asking you these questions, again, not to test your memory but we do have to make a record on some of this information and so I have to go into it in some detail. I take it that when you were on the Cook Inlet District you became quite familiar with the entire area over which you had responsibility?

A Quite familiar.

Q And did you make trips very often up and down the [16] Inlet or the shores adjoining the Inlet?

A Frequently.

Q And, generally, where would you go on your trips? Did you have any set pattern that you would follow when you made trips?

A Primarily, I would go to the places where salmon were being packed, for instance, Kenai, Homer, Seldova, and across the Inlet to the Fribrock.

Q Could you spell that for the court reporter?

A F-r-i-b-r-o-c-k.

Q And where was that located?

A That was located on the north shore, I guess, of the Inlet. I'm trying to think of the Inlet's direction, but the shore opposite from Kenai.

Q I see. Probably would have been somewhere in the vicinity of Chisik Island, perhaps?

A Yes.

Q Did you become familiar with the settlements on Cook Inlet to any extent?

A I think I was familiar with most all the settlements, yes.

Q And what was the basis for most of the settlements? What was the economy?

[17] A The settlements were primarily located with respect to the fish runs in Cook Inlet.

Q And by the "fish runs," I assume you're referring to primarily salmon?

A Yes.

Q Could you explain that. In other words, what was the significance of their location relative to those runs?

A Well, since these are anadromous fish and they ascend river systems. You will note that the most of the packing plants were located near the mouth of rivers. For instance, the Susitn and the Kenai River are important areas.

Q I take it also that in your activities you became familiar with the laws, regulations, and treaties which govern the operation of the fisheries in Cook Inlet?

A Yes.

Q And did you feel that this was necessary in order for you to carry out your duties there?

A Yes.

MR. CRANSTON: I'm going to ask the reporter to mark as Deposition Exhibit 1 United States Coast and Geodetic Survey Chart 8502, 16th Edition, July 4th, 1970, corrected through notice to Mariners 27/70.

[18] (The document was marked as Defendant's Deposition Exhibit 1, for identification.)

BY MR. CRANSTON:

Q Now, Mr. Costello, I'm going to hand you what has been marked as Deposition Exhibit 1 and ask you if this represents generally or at least included on that chart is the area over which you had responsibility while you were on the Cook Inlet District? Not the entire chart, but is the area over which you had responsibility included on that chart?

A Is the area included in this chart?

Q Yes.

A Yes.

Q And I take it that you are generally familiar with the area designated as Cook Inlet on this chart?

A Yes.

Q With reference, if you can, to points on the chart, could you delineate the area of Cook Inlet over which you exercised your responsibilities? In other words, where did you general patrol? For instance, down to what portions, if you can describe a line?

A Patrol. I personally?

Q Or those under your supervision.

A Well, the answer, I can't be too definitive because I would have to be guessing where the patrols terminated and so forth. But the patrols frequently would begin, for instance, [19] in a place like Seldova because it was a harbor, but primarily the patrolling would be done in this area.

Q Now, you're pointing—

A I'm pointing to an area south of Kalgin Island, a line between Ninilchik and Chisik Island.

Q Now, was the reason that the patrols were somewhat emphasized in that area because that is where an active fishery was conducted?

A Yes.

Q What was that fishery?

A A salmon fishery, primarily red salmon.

Q At that time, also, you were familiar, as you have testified, with the definition of the Cook Inlet District as described in the regulations, is that correct?

A That's correct.

Q Do you remember what generally the points of land referred to in that description of the Cook Inlet District were?

MR. RASHKOW: I have to interrupt here to say the best evidence of that, of course, would be the regulations, I believe.

MR. CRANSTON: I'm just asking him if he knows at this time. If he doesn't, then I might have to refresh his memory [20] by reference to the regulations.

THE WITNESS: No.

BY MR. CRANSTON:

Q If I told you that the regulations defined that boundary as from Point Gore to Cape Douglas, would that refresh your memory?

A Well, under oath I would have to say no, I can't remember precisely that is the definition of the district. I don't question that may be true. Probably ten years ago I might have been able to say yes or no, but my answer is I don't remember really that was—you must remember one thing, during the time I was there the extent of my responsibility changed. They included, for instance, as part of my responsibility Resurrection Bay and so forth at some time during the time I was there.

Q I see. Okay. Assuming that was the definition of the Cook Inlet District, that is, a line from Point Gore through Barren Islands to Cape Douglas would you have considered it your responsibility to patrol that area as with respect to your enforcement duties?

A My responsibility. I can't answer yes or no on that because the extent of the patrol really had to do primarily with where there was fishing effort. If you meant did we see [21] whether there was fishing effort

there or not, then I would say yes. But we were familiar enough with the fishery and so forth to know that you wouldn't expect to find fisheries in certain areas and you would also expect to find it elsewhere. So we didn't just as a routine thing—for instance, I can't ever remember patrolling out to the Barren Islands on any occasion.

Q And would you say this is primarily because so far as you were aware there was no active fishery conducted on the Barren Islands?

A Yes.

Q Now, when you were patrolling, again, I'm talking about your enforcement duties, or maybe when I say "you," I refer to you and those under your supervision, generally what were you looking for?

A We were looking for such things as fishing during closed season. For instance, at times in Cook Inlet they might be only allowed to fish two days in a week. So if they were fishing on the days when the season was closed, and as you recall, under the White Act it was always closed on the weekends, we would be looking for anyone with fishing gear in the water during that period. This refers to salmon fishing.

Q All right. What other type of regulation did you [22] attempt to enforce or were you trying to ensure compliance with? For instance, were there drift net spacing regulations?

A Yes.

Q And did your patrols look for or seek to enforce compliance with those regulations?

A At times, yes.

Q And if a violation of the regulations were observed, what would be done?

A You would have to be more definitive because it depends on the regulations. For instance, if it were a spacing on the shoreline of set nets, it would be quite easy to go in and file a complaint and so on. If it were a violation of two vessels in the middle of the Inlet that were too close to each other, we would make some adjudication at the time as to whether or not they were

attempting to separate themselves or not. We are in an area where the currents are very strong and in spite of the regulations at times two boats together pulling on their nets as hard as they do could not help but violate the law in the sense that they would get too close together. So we would have to make some type of judgment. But if we felt at the time it was a deliberate violation we would attempt at least to do something about it, that is to say, cite the violater and so forth. [23] Q Now, in regard to this enforcement activity, in your attempts to ensure compliance with the White Act and its regulations in the Cook Inlet District did you concern yourselves at all with the distance a particular violation may have occurred from the shoreline, say, with respect to the spacing of drift nets?

A I'm sorry. I don't understand your question.

Q Well, suppose the violation of the drift net spacing regulations had occurred south of Kalgin Island and more than three miles from any point of land, would this make any difference to you, to your going in and attempting to enforce the regulation?

A No.

Q Had there been a violation of any of these regulaitons you would have enforced it within any point in the district as defined by the regulations?

A Yes.

* * * *

[29] Q During the time when you were in the Cook Inlet District were you aware or did you observe any activities by foreigners, by foreign fishing vessels in the area described as Cook Inlet as it appears on Deposition Exhibit 1?

A The only occurrence that I can call clearly to mind, and I can't be sure of the year, was two boats that were said to be Canadian boats were fishing somewhere in the area between Seldovia and Homer. They were apparently halibut fishing although I didn't see them put their gear in the water or anything. But they were somewhere in Kachemak Bay.

Q You can recall two Canadian halibut boats fishing in [30] the area, say, within a line—

A Between Homer and Seldovia.

Q All right. So that would be also within the line drawn from Anchor Point to Dangerous Cape, which are the headlands of Kachemak Bay?

A In that approximate area. And I want to qualify my statement by saying that these were pointed out to me by someone, I believe, Jim Branson, as Canadian boats. I didn't personally observe them except that I saw them and he pointed them out and said there's a couple of Canadian boats, or words to that effect.

Q Were you flying at that time?

A Flying in a Grumman Goose. We were on our way to Seldovia.

Q Could you point to Deposition Exhibit 1 and with reference to the word "Kachemak" try to indicate about where the boats were located?

A Approximately at the letter "C" in Kachemak.

Q All right. What, if anything, was done when you observed these boats?

A Nothing was done.

Q Was there a report made to anyone either by you or Mr. Branson?

[31] A I don't know. I'm not even sure it was Branson.

Q All right. Was that the end of the incident so far as you were involved—

A Yes.

Q —or concerned?

A (Affirmative nod.) As I recall it occurred prior to the time I was in charge of enforcement.

Q If it was not Jim Branson who was with you, could it have been anyone else?

A It could have been a variety of people. It could have been Holger Larsen. I haven't thought of these people in years. There was a very big, tall man. I can tell you if you run through the names, certainly.

* * * *

[34] Q All right. Well, that explains the absence of the reference in his report to me. Apart from that one incident then, are there any other incidents involving any type of foreign vessels in the Cook Inlet District as defined by the regulations of which you're aware or can tell me about?

A Not that I can recall.

Q Do you recall an incident other than the one you just told me about involving Jim Branson having observed a Canadian halibut boat in Cook Inlet and having referred the matter of [35] what to do about that boat to someone in Juneau, perhaps to Howard Baltzo?

A Again, as I recall, it was two boats; and, number two, we wouldn't have referred it to Howard Baltzo. We would have referred it to Swanson or Ralston.

Q I see. Do you know whether this incident of which you have told me about was referred to any of these people in Juneau?

A I have no knowledge.

Q Are you aware of any decision having been made by Howard Baltzo or through those under him, Mr. Swanson or Mr. Ralston, relative to procedures followed if foreign vessels, Canadian halibut vessels, or other foreign vessels should be observed in the Cook Inlet District?

A I'm not aware of any directions or information of that kind.

Q While you were in charge of the enforcement, then, you had no specific instruction from any of your superiors relative to any position you should take involving foreign vessels in Cook Inlet?

A That's correct. I got no instruction.

Q Did you generally have staff meetings where you would get together with your superiors or even with those working [36] under you and discuss problems which were of general concern to all of you, much as you would today going to a convention or something?

A We had regularly one annual meeting that occurred during the winter in Juneau which was the headquarters. And we had regular meetings with each

one concerned in the District prior to the annual fishery hearings which were held in all districts of Alaska every year, and sometimes more than one hearing was held in a district. For instance, some years we would have a hearing in Anchorage and then one in Seldovia to make it convenient for all fishermen and packers and so forth to attend and then there were also hearings held in Seattle. At those times those would be considered staff meetings which were briefings for the hearings.

Q At any of these meetings were there any matters involving the presence or activities of foreign fishing vessels in Cook Inlet brought up or discussed?

A Not that I recall.

MR. CRANSTON: I have no other questions. Thank you.

MR. RASHKOW: I'll go on with cross. Mr. Costello, this will be cross-examination.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

* * * *

[38] Q Were there any assumptions of what you would do if you detected a foreign vessel fishing more than three miles from shore in Cook Inlet?

[39] A To me it is a moot question. It was never posed.

Q What would you have done in enforcement if you had detected a foreign vessel fishing more than three miles from shore?

MR. CRANSTON: At this point I would lay an objection for the record that the fact upon which the question is based is not in evidence and also that it is opinion as to what he would have done. In the absence of any facts necessitating the action, it is irrelevant.

BY MR. RASHKOW:

Q Were you told to arrest any foreign vessel fishing in Cook Inlet more than three miles from shore?

A No.

Q There were no such instructions. What if they were violating the regulations?

A This is hypothetical, of course.

Q Right.

MR. CRANSTON: And, again, I would like to enter my same objection.

THE WITNESS: To the best of my knowledge, and in response to your hypothetical question, I think we would have treated them like we did any other vessel. If they were in violation, we would have arrested them.

* * * *

[47] FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q You testified on cross-examination in response to a question that were you ever told to arrest foreign vessels in Cook Inlet, and you said you were not told to arrest foreign vessels in Cook Inlet. My question is were you ever told by anybody not to arrest foreign vessels in Cook Inlet?

A Neither.

* * * *

[3] Thereupon,

ALBERT M. DAY,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q State your name, please.

A Albert M. Day.

Q And what is your address?

A 1810 Pine Street, Camp Hill, Pennsylvania.

Q And what is your age?

A I am 74.

Q What is your present occupation?

A Oh, I am presently retired and serving as a consultant to various agencies, State and Government, on conservation matters.

Q Have you ever had an occupation or employment with the United States Government?

A All my life, practically.

Q And could you tell me what those occupations have been?

A I started back in 1919 while I was still in college [4] at the University of Wyoming as a field assistant for the old, former Biological Survey of the Department of Agriculture, and through continuous employment and various promotions, I came into Washington from Wyoming in 1930 and I was with the Biological Survey until it was abolished in 1940. At that time the Department of Commerce, Bureau of Fisheries was combined with the Biological Survey and it became the United States Fish and Wild Life Service in Interior. I was Assistant Director in the Biological Survey at that time and became Assistant Director of the Fish and Wild Life Service in 1942. I held that position as Assistant Director until Dr. I. N. Gabrielson. who was the Director, retired and I became Director of the Fish and Wild Life Service which, as I stated, was a combination of the Biological Survey, the wild life side, and the Bureau of Fisheries, or the fisheries side. So, we had a combined operation covering all fish and wild life at the Federal level. I served as Director of the Agency until approximately June 30, 1953, at which time we had a change in Administration in Government and I was reduced in grade to an Assistant Director. I served in that capacity until I retired in June of 1955.

Q All right, now, with respect to your training for your occupations with the Fish and Wild Life Service, what [5] particular training had you had?

A I was a graduate in zoology from the University of Wyoming, largely fisheries and wild life, and served in various capacities throughout this entire period. As time went on I was the first Director of the Pittman-Robertson Program which was a highly successful program of distributing arms and ammunition tax to the states for wild life restoration. Then, I helped argue through Congress and set up the parallel program, the Dingle-Johnson, as it is known, which is Federal aid to the fisheries for the various states, including Alaska and all the territories. So, my experience and training has been exceedingly broad in both fields.

Q Now, you stated you were Director of the United States Fish and Wild Life Service from 1945 through 1953?

A 1946 through 1953. I was Assistant Director four years previous to that, which also brought me into contact with the administration of the fisheries.

Q Now, could you describe a little bit the responsibilities you had in that office, what responsibilities you had?

A The responsibilities were very broad. We enforced [6] laws under a treaty with Canada which date back to 1918 dealing with migratory birds. We enforced the laws dealing with the Alaska fur seal under a treaty with Russia and Canada, dating back to, oh, somewhere around the 1920's. Then, we negotiated and created treaties on fisheries with Canada in connection with the halibut fishery, the sockeyesalmon fishery in British Columbia, the North Pacific Fisheries Commission Treaty, and the Great Lakes Fishery Treaty. Those are the principal treaties with Canada and with other nations dealing with the handling of the fisheries of interest to these various countries, both on the Pacific and Atlantic.

Q And with respect to Alaska, did you have any responsibilities under Federal law there?

A Yes, I had very heavy responsibilities.

Q Could you describe what your responsibilities were particularly with respect to fishing in Alaska?

A Under the Alaska fishing laws and regulations for the protection of the commercial fisheries of Alaska—I am quoting from a 1953 issue—"The regulations for the protection of the commercial fisheries of Alaska shall be subject to such change or revision by the Secretary of Interior as may appear advisable from time to time. There is hereby delegated to the Director of the Fish and Wild Life Service authority to [7] shorten, lengthen or reopen for limited periods any closed fishing period and to impose further restrictions on the means, methods and areas of fishing," and so on. So, there was delegated to the Director, to me, the Secretary's authority for the administration of the Alaska fisheries.

Q All right, did the Secretary then leave most of the management of these fisheries in your hands while you were Director?

A Yes. I obtained copies of some of these regulations from the Interior Library yesterday which include. I also have an illustration of the methods used under this delegation of authority for management of the fisheries in the field. I find in the 1946 regulations which was the first year that I became Director, although, as I stated, I had been Assistant Director for four years previous to that time, a series of changes which I signed, one dealing with the Bering River and Icy Bay area fisheries; another, Kodiak fisheries; another, Southeastern Alaska fisheries; Bristol Bay, Kodiak extension of the zone in Alaska Peninsula and a whole series of seventeen changes dealing with various fishing areas in Alaska, and also an announcement of hearings. So, the regulations, and the old files are ample proof of the responsibility of the Director of the Fish and Wild Life Service to manage the fisheries under the delegation of [8] authority from the Secretary of the Interior.

Q All right, now, with respect to the particular laws and regulations governing the fishing activities in Alaska, did you have any responsibility for the enforcement of those laws?

A Yes, we had complete authority in Alaska at that time. It was a territory and under the Alaska fishing

regulations, the Director of the Fish and Wild Life Service and his staff had complete authority for the enforcement of laws of Alaska dealing with fisheries and wild life.

Q And you have stated that you were the individual to whom the Secretary of Commerce delegated—

A Interior.

Q Secretary of Interior delegated his responsibility in this area?

A Yes.

Q Now, are you familiar with the laws and regulations promulgated under the White Act and with the White Act, itself?

A At that time I was very familiar. It has been almost twenty years, so I am not familiar now with things that have happened since that time, but at that time I was very familiar, yes.

Q With the Act and the regulations?

[9] A That is right.

Q Are you familiar or were you at the time you were Director familiar with the boundaries of the various districts which the regulations defined under the White Act with respect to fishing in Alaska?

A Yes. In these areas of which there were at that time thirteen specific areas specified by law defining the boundaries of these thirteen areas, which covers everything from the Kotzebue, Yukon, Kuskokwim area in the Bering Sea, down around the entire Aleutian Chain of islands and clear on down along the Coast to the Border of Canada, divided and named, and these districts were established in the original instance under the old White Act which is listed in the regulations as originally passed on June 6th, 1924, but as amended on June 18, 1926. So, these districts have been established under the authority of the Fishery Law and have been practically unchanged since 1924.

MR. CRANSTON: All right. I would like to have marked as Deposition Exhibit 1, U.S. Coast and Geodetic Survey Chart 8502, 16th edition, dated July 4, 1970, corrected through notice to Mariners 27/70.

(Chart marked Defendant's Deposition Exhibit No. 1 for identification.)

[10] BY MR. CRANSTON:

Q All right, Mr. Day, I am going to hand you what has been marked as Exhibit 1 to this deposition and ask you if the portion of this chart depicted as Cook Inlet was included within the area over which you had responsibility as Director of the Fish and Wild Life Service?

A The answer is yes.

Q Now, again, with reference to Exhibit 1, can you locate the areas defined by the regulations as the Cook Inlet District?

A The regulations define Cook Inlet as follows: "Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters and all adjoining waters north of Cape Douglas and west of Pt. Gore. The Barren Islands are included within this area."

Q All right, could you indicate by drawing a line on Exhibit 1 where the boundary of the Cook Inlet districts would be as you interpreted the regulations?

A Do we have a colored pencil?

Q Yes. Here, I am going to hand you a red pencil.

A I am marking this—

MR. CHARNEY: I object to the question but I will allow him to continue.

[11] MR. CRANSTON: You may continue.

THE WITNESS: I am marking this map from Cape Douglas, as defined by the regulation, eastward around Barren Islands and northeastward to Pt. Gore. There is Pt. Gore.

MR. CRANSTON: All right, the record will show that the witness drew a red line on Deposition Exhibit 1 circling Cape Douglas and also circling Pt. Gore and drawing a line between those two circles.

THE WITNESS: South of the Barren Islands.

BY MR. CRANSTON:

Q Over what portion of the water area north of that line did you consider you had authority to exercise jurisdiction of the Fish and Wild Life Service?

A All of it.

Q And in your administration of the Fish and Wild Life Service, did you exercise jurisdiction over that area?

A We did.

Q And upon what did you base your decision to exercise jurisdiction over that area?

A The law.

Q And specifically what was the law you relied on?

A The general provisions of the basic law of 1926 which, under Section 102.1, states that, "Each regulation [12] herein contained is of general application within the particular area to which it applies and no exclusive or several right to a fishery is granted therein," and the law in this instance on Cook Inlet applies to the area as defined in paragraph 109.1, which states that, "The area includes all waters, tributaries, and all adjoining waters north of Cape Douglas and west of Pt. Gore including the Barren Islands."

Q Did the Secretary of Interior ever question, while you were Director, your administration of the fish and game laws as you applied them in Cook Inlet?

A Not to my recollection. I assume that questions were raised on all of Alaska from time to time, but nothing—

Q Did you ever receive instructions to vary your practice from the Secretary of Interior?

A Oh, possibly. The Secretary was the final authority and I had frequent conferences with him and I presume over the years that suggestions were made by the Secretary that we should do this definitely or that definitely. That would be normal procedure of any good administrative outfit.

Q But specifically, with respect to the area over which you exercised jurisdiction in Cook Inlet, did you receive instructions—

A No, not to my recollection.

[13] Q Are you familiar with the concept of the three-mile limit?

A Yes.

Q And with respect to the administration of the fish and game regulations in Cook Inlet, where did you apply the three-mile limit?

A We applied the three-mile limit three miles south of the border—which I have drawn.

Q That is, you applied the three miles from the red line that you have drawn on the map?

A Yes, seaward.

Q While you were Director of Fish and Wild Life Service, were you aware of any foreign fishing activities in Cook Inlet?

A Not to the best of my recollecton.

Q Was there any policy promulgated by you or of which you are aware with respect to foreign fishing activities in Cook Inlet?

A No. Since coming down to Washington and going over some of the material, I find an instance in some of the correspondence of Canadian boats coming in and fishing for halibut, as I recall the correspondence. I don't remember the incident. I am sure if it had been of any great moment, I would have remembered it.

[14] Q Do you recall any decision which you made at that time as Director with regard to the permissability of Canadian halibut fishing in Cook Inlet?

A Well, I didn't recall it until I arrived here yesterday, and I was shown a memorandum which I signed on April 28, 1953, quoting a portion of an opinion from the Chief Counsel of the Fish and Wild Life Service at that time, Don Chaney, in which he touches on foreign fisheries in Cook Inlet area and says that the situation is somewhat cloudy. Cook Inlet has never been claimed as an historical bay, yet he refers to territorial waters, and we have been considering the territorial waters as I have outlined on this map. So, this opinion in re-reading it here after almost twenty years is not clear to me exactly what was meant at that time.

MR. CRANSTON: Mr. Charney, is this your copy? I would like to have this marked as an exhibit. Would you mark these two pages, one a memorandum dated May 8, 1953, from Dan Ralston to Enforcement Agent Larsen

and Enforcement Agent Robards; and memorandum dated April 28th, 1953, from Albert M. Day to the Regional Director of Juneau. Mark those as Deposition Exhibit 2.

(Documents marked Defendant's Deposition Exhibit No. 2 for identification.)

[15] BY MR. CRANSTON:

Q Referring to the quote from the Chaney opinion in your memorandum of April 28th, 1953, there is a reference that it would be "unwise to take any action against foreign vessels fishing beyond the territorial waters of Alaska, that is three miles." Now, with respect to Cook Inlet and the three miles referred to in that letter, and again with reference to Deposition Exhibit 1, where would you determine the point with respect to Cook Inlet where it would be "unwise to take action against foreign vessels"?

MR. CHARNEY: I object to this question. I think the document stands for itself. The witness states that he does not recall this document. I think it would be irrelevant and improper for him to give an opinion now. He has left the service. He doesn't recall what he meant when he wrote that memo.

BY MR. CRANSTON:

Q Do you recall, Mr. Day, how you interpreted this memorandum with respect to the three-mile limit in Cook Inlet as to your attitude towards foreign fishing?

A No, I don't recall this memorandum. It was a complete surprise to me. I don't understand exactly what it means. So, I would have to agree, I think, with Mr. Charney. [16] I am not really competent at this time, twenty years later, to give an intelligent comment on what Chaney did mean.

Q All right. But as to your interpretation of the regulations and the three-mile limit with respect to Cook Inlet, you have testified that you would have measured

the three-mile limit and you did during your administration from the red line drawn on this map?

A That is correct, to the best of my recollection.

Q Now, with respect to foreign fishing activities in Cook Inlet, while you were Director, would it have been your policy to permit foreign vessels to fish within the red line drawn on that deposition Exhibit 1?

A No, it would not.

MR. CHARNEY: Objection. What his policy would be is irrelevant to this case but rather what was done.

BY MR. CRANSTON:

Q Did you permit foreign fishing vessels to fish within three miles?

A Not to my knowledge. As I said, now I understand there was some. I don't recall it. So, if there were halibut vessels in there, certainly some—not me, personally—but some of our staff must have known that they were there. In fact, I think the depositions will show that they contacted [17] some of the Canadians, perhaps. I don't know the details on it.

Q Was there any difference during your time as Director of Fish and Wild Life Service as to policies with respect to Canadian fishing vessels and fishing vessels of other nations?

A I don't know that one could call it a policy. But as a matter of fact, and as I stated earlier, we had a great many fishery treaties and wild life treaties and contacts with the Canadians and we worked quite closely with them on all of these fish and wild life matters that were of interest to both countries. I presume that if this had come to my attention, and I don't recall that it did, my first reaction would have been to contact our State Department representative, who worked with the Canadians, as well as other countries, to call it to the attention of the Canadians to see if it could not be disposed of without any difficulty. I rather guess that is what happened.

Q I see.

A I have no recollection of it personally.

Q It would have been your conclusion, then, that because of your close contact with the Canadians, that they should be permitted insofar as possible—

MR. CHARNEY: Objection. That is a leading question.

BY MR. CRANSTON:

[18] Q Would you have taken the same attitude with respect to Japanese or Russians had they appeared in Cook Inlet?

A Probably not. We didn't have the close working relationships on international basis with them.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. CHARNEY:

* * * *

[19] Q If one of your enforcement agents testified as to the jurisdictional limits that they used in Cook Inlet, would you dispute that?

[20] A I might. I don't know what it would be. I notice in this memorandum that we have under discussion—may I have that again, please, this one—that my memo of April 28th was sent to the Regional Director, and that Dan Ralston, who was in charge of enforcement, sent out his memorandum and specified the manner to be followed. He said, "As the Director points out, this is a legal question and the Chief Counsel's opinion which the Director quotes will be the policy which we will follow. I am not in complete agreement with the Counsel regarding Cook Inlet, as it is my opinion that this Inlet is and has been historically claimed as Territorial waters." So, there were differences of opinion at times, but under this regulation under which we operated, I could see no reason now and I am sure at that time why we should not have enforced our laws within the limits set by the regulations.

Q Now, aside from your interpretation of the law and the regulations as you have done here, were you given any other directives by the Secretary or by the State Department that you recall telling you the jurisdiction you were to exercise in Cook Inlet?

A No.

Q Do you recall raising the question of the jurisdiction in Cook Inlet with the Secretary of the Interior?

[21] A No.

Q Do you recall discussing that question with the Secretary of Interior?

A No. For clarification, let me state this: That from the standpoint of fisheries in Alaska, Cook Inlet was of much lower priority of importance than several of the other areas and our attention was given in large part to the very important sockeye runs in Bristol Bay and the red salmon runs in Southeastern Alaska and the Juneau area. Many areas are much more important from the fishery standpoint than Cook Inlet. Cook Inlet was something that we just didn't pay as much attention to because it was of less importance to the industry.

Q You applied the three-mile limit south of this line you have drawn on Deposition Exhibit 1. What do you mean by "you applied"? Did you do anything with respect to it or are you just speaking in theory?

A No. The enforcement officers, I am sure, were instructed to consider the area within the three-mile limits as territorial waters and to enforce the regulations at that point.

Q Do you recall any such order?

A No.

Q Do you recall any incident of enforcement of the laws [22] three miles seaward of that line?

A Not offhand, no.

Q Do you recall any action by the United States, by you in your enforcement, in your position, that was based on jurisdiction extending three miles seaward from the line you described on Deposition Exhibit 1?

A Yes.

Q What do you recall?

A In reading from the regulations the definition of the Alaska Peninsula area, "The Alaska Peninsula area is hereby defined to include all territorial, coastal and tributary waters of the Alaska Peninsula from a point on the Coast, three statute miles south of Ketchikan Sea Cove on the Bering Seashore, extending southwestward—

Q No, what I am asking you is whether any actions—I don't mean about the written regulations—I mean enforcement actions, actions in the field or otherwise.

A I have no recollections of the detail on that.

Q Well, you have no recollection of an incident, either, do you?

A No.

Q Do you have a recollection of any convictions obtained while you were in your position from 1942 to 1955 of [23] American fishing in violation of the regulations more than three miles measured from the shore inside Cook Inlet?

A I have no details in my recollection on this matter, and I have no records. So, I wouldn't be able to corroborate one way or the other.

Q At the time this memorandum was written, the April 28th one, were you the Director of the Fish and Wild Life Service?

A Yes. I signed it here.

Q Do you know who Agent Larsen was, FWS, Anchorage?

A Yes. Holger Larsen was the enforcement agent at Anchorage for both fisheries and wild life.

Q Was he the man that was in charge of enforcement in the Cook Inlet District that you have spoken of?

A In that district?

Q Yes.

A Yes, I am sure of that. Dan Ralston who wrote this memorandum was in charge of enforcement for all of Alaska. Holger Larsen was the agent at Anchorage.

Q Do you recall ever rescinding this memorandum?

A No. I left as Director shortly thereafter so I couldn't testify as to what happened since that time?

* * * *

[25] Q If Howard Baltzo testified that he was Assistant to the Regional Director and he was over Dan Ralston in 1952 and 1953, do you have a firm recollection to disagree with that?

A I would doubt it.

Q You doubt what?

A That he had authority over Ralston, that his authority as an Assistant Regional Director extended to supervision of Ralston doing enforcement. I don't recall the details of the regional setup but it would not be my recollection that Baltzo was ever administratively responsible to [26] any great degree at least for the actions of the enforcement group. I may be wrong but I don't think so.

Q Aside from Alaska, what other responsibilities did you have?

A Well, we had responsibility of the entire United States in working with states and state fishing and game departments. We had authority in Hawaii to run a Pacific Oceanic Fisheries Research Project. And we had responsibility in Hawaii, elsewhere in Hawaii, on wild life matters and we had responsibility in Puerto Rico in certain areas. We had treaties, interstate treaties, completely surrounding the Border of the United States on fishery matters. There was the Atlantic Fishery Compact, the Gulf Fishery Compact, the West Coast Fisheries. We have international relations with Costa Rico and Mexico and some other Central American countries on tuna. We have the regulations which I mentioned with Canada. In the United States we had, as I recall, about 4500 employees responsible for research, including wild life research. Wild life research stations. There were more than a hundred fish hatcheries that produce game fish distributed in cooperation with the various states; responsibility for protection of migratory birds. We had authority for a predator control program * * * [27] dates back to 1915 when the wolves and coyotes and mountain lions were troublesome on the growing livestock industry in the West; and rodent control—prairie

dog and ground squirrel and rat control; and we have research stations in Denver on wild life matters, and another one out here at Patuxtent, Maryland, that is now working largely on pesticides and restrictions of that kind. We have had projects dealing with control of blackbirds in the rice fields of the lower Mississippi and almost anything that you could name in Federal responsibility for fish and wild life resources came under the Directorship of the Fish and Wild Life Service at that time. Since I left the Government, the two bureaus that had been wed for some ten or fifteen years, were divorced again and the Bureaus of Commercial Fisheries and Bureau [of] Sport Fisheries and Wild Life were established. This has more recently been changed by commercial fisheries going over to one of these new agencies.

Q I notice that you went from Director to Assistant Director in 1953?

A We experienced a change of administration when General Eisenhower and the present President of the United States came in at the top of the Government. After a long [28] period of political draught, quite a few changes were made in top command. The Secretary of the Interior was a former Chevrolet car dealer in Oregon and stated that he wanted his own men around him, which has become rather commonplace since. So, for the first time in many, many years the agency was converted from a scientific agency—all the previous Directors had come up through the ranks—to one that was quite political. He brought in a new Director. His name was John Farley from California. He became Director of the Fish and Wild Life Service. But, having had service since 1919 and being a veteran of World War I, I happened to have considerable employment rights and refused to politically step out and forget about the whole thing, so I was reduced in grade to an Assistant to the Director and remained still with the Government for a period of time until I became located outside. I then went with the Artic Institute of North America where I spent a couple of years. Following that, I became Director of the Fisheries in the State of Oregon for four years. Following that, I became Director of Fisheries in the State of Pennsylvania for another four years, and since retiring from there, I have been working with a half dozen bureaus as a staff consultant; Bureau of Land Management, National Park Service, the Sport Fisheries and Wild Life and Public [29] Land Law Review Commission, and so I have been keeping considerably busy since that period. But that was the reason for my reduction in grade from Director to Assistant Director.

MR. CHARNEY: I have no further questions. I would like to state for the record for Mr. Cranston's information that Deposition Exhibit 2 was located in the open files of the National Fisheries Service in Juneau, Alaska, and have been made available to the—well, I guess I am not testifying, I am informing you and I want to see if you approve. The words "confidential" have only been recently struck out, although I don't think they were under any restrictions, or they weren't. Alaska had access. We took the precaution of getting authority to strike out the words "confidential" to make sure I wasn't violating any national security problems. I don't see any national security implications but, like I say, this document has been changed in that way.

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FURTHER EXAMINATION
BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q You don't intend to imply, do you, that Cook Inlet did not have valuable fisheries by your testimony?

[30] A No. I don't want to leave that impression that they do not have valuable fisheries but there are other areas that are more valuable. Cook Inlet is not the top fishery district in the State of Alaska.

Q All right, now, you testified relative to rather extensive responsibilities of your office while you were Director outlining at length what your responsibilities

were. Notwithstanding those responsibilities, did you regularly visit Alaska?

A Yes. At the time I became Director, the Secretary of the Interior had to sign all of these documents of changes and regulations. I asked him to make this delegation of authority which I read to you before. He delegated it to the Director of the Fish and Wild Life Service with other delegations subject to his approval. Alaska was a very, very, valuable fishery. At that time it was a hundred million dollars a year. A million or two dollars could be made or lost with one or two days difference in the fishing season when there is a valuable sockeye salmon or red salmon run, particularly in the Bristol Bay area. So, the responsibility for this fishery was such that during seven summers when I was Director I virtually gave up responsibilities in these numerous other areas and concentrated on Alaska, on the [31] Alaskan fishery matters, to be there on hand to sign these regulations on the spot because of the urgency oftentimes of the importance of the fishery and the management of the fishery. So, I spent practically—well, most of every summer for seven years, from 1946 through 1952 in Alaska concentrating—first priority was on fisheries, although because of our responsibility on fish and wild life with the Regional Director, Clarence Rhode, and the technicians and so on, I covered all of Alaska. Nunivak and the Pribilofs and the whole thing. But fisheries were the prime concern at that time and for that reason I spent almost every summer in Alaska. I mean, almost all of every summer in Alaska.

• • • •

[2] DONALD W. ERICKSON,

called as a witness by and on behalf of the defendants, having been first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Donald W. Erickson.
Q What is your residence?
A Route 7, Box 589, Olympia, Washington 98506.
Q What is your age?
A 61.
Q What is your present occupation?
A I am a contract officer, for the State of Washington, Department of Fisheries.
Q Have you ever had any former occupations with the United States Government?
A Yes.
Q Have you had any occupations, in United States Government service, involving Alaska?
[3] A Yes.
Q Did any of these occupations concern themselves with the Cook Inlet area of Alaska?
A Yes.
Q When did you first work in the Cook Inlet area?
A In the summer of 1941.
Q In that period, then, what years did you work in Cook Inlet?
A To the best of my memory, 1941 and 1942.
Q What were your responsibilities?
A I was a temporary employee, at that time, assisting Captain Roy L. Cole, the Master of the Teal, who was also the agent in charge of the Cook Inlet district, for the Fish & Wildlife Service.
Q What, specifically, was your title, if you had one?
A I believe the title used, for the temporary, at that time, was stream guards.
Q During that period of time, what was the nature of the commercial fishery being conducted on Cook Inlet, what type of commercial fishery was it?
A Oh, it was essentially a salmon fishery.

Q Could you then subclassify that into the type of fishery?

A Well, of course, that is by types of gear. I have, here, my copy of the regulations from 1957 and they are essentially the same, from year to year.

[4] MR. BRADLEY: I would object to his reading; that is the best evidence.

BY MR. CRANSTON:

Q Do you have any recollection as to what type of gear they used, in 1940, when you were there?

A You mean in the salmon fishery?

Q Yes?

A Well, they were salmon traps, beach seines, drift gill nets and set gill nets, frequently called set nets and stake nets, which is just another name for the same kind of gear.

Q Do you recall, generally, the area of the drift gill net fishery, in the 1940's, in Cook Inlet?

A Largely, it was confined to an area—most of it actually north of Kalgin Island, but some of it south of the island, down about as far as Seldovia.

MR. CRANSTON: I would like to have marked as Defendant's Deposition Exhibit 1, U.S. Coast and Geodetic Chart No. 8502, 16th edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

(Document, chart, marked as Defendant's Exhibit 1, for identification.)

Q Mr. Erickson, I will show you what has been marked as Defendant's Exhibit 1, for this deposition, and ask you [5] if included within the area depicted as Cook Inlet is the area where you served, in the 1940's?

A Yes, sir.

Q If you can remember—and if you cannot, just say so—but if you can state the limits of the gill net fishery, in the 40's, I would ask you to outline it on this exhibit, with a red marking pen; I mean enclose it with a red circle, if you can?

A Basically, I don't believe that the thing went south of Anchor Point. You are talking about the drift gill net fishing, now.

Q Right.

A How far up it went, I don't remember; I seem to remember some fishing, around the Forelands.

BY MR. BRADLEY:

Q Could you draw it, on the chart?

A To the best of my memory, there was some of it up here.

Q Where is that?

A South and west of Fire Island. But essentially, it was in here. There was some drifting done, in Trading Bay, by the natives, who had a whole series of set nets, along here, and there was some drifting done, in here, too. For practical purposes, let's put it across there (drawing line).

BY MR. CRANSTON:

[6] Q You have drawn a line, from Anchor Point to a point almost directly across from Cook Inlet, on the western shore, and that line you indicate was the southern boundary of the drift gill net fishery?

A Well, as I remember, where they drift; it is not a matter of legality but it is a matter of water. It is possible that we had that thing closed off, too, at some later time. One of the big problems we were faced with was too much gear. Of course one means of taking care of that is to restrict the area, in which they can fish.

Q To the best of your recollection, then, the area where the gear was present was north of that red line which you have drawn?

A That's right; and south of the line, from West Foreland to East Foreland. But as I say, there may have been some drift netting, above there, and in fact I am sure there was.

Q Did the drift gill net fishery concern itself with any particular locality, within that red area, within

those two lines that you have drawn, or was it scattered throughout that area?

A It was scattered—just wherever they thought they could catch fish.

Q But then, just so we are clear, you are saying that [7] all of the water area enclosed within those lines would comprise a drift gill net fishery, at some time or another, is that right?

A Oh, yes. There is a drift gill net fishery there; let's put it that way.

Q And I am talking about the 1940's?

A Yes.

Q What governed the areas that you would patrol, with Captain Cole, in other words, where would you patrol with him?

A All of the way up and down the inlet.

Q What was the purpose of these patrols?

A To see that the law was enforced.

Q Against whom?

A Any fisherman that's out there.

Q Did your patrol, in the 40's, concern itself with any distance from the shoreline?

A Not particularly. You went where the gear was or where you thought the gear would be.

Q Was there any halibut fishery conducted in Cook Inlet, in the 40's?

A To the best of my knowledge, no, except an occasional halibut was taken, incidentally; and I believe that the halibut regulations permitted what they called incidental catches.

[8] Q Did you ever observe any Canadian vessels, fishing for halibut, in Cook Inlet, when you were there?

A No, sir.

Q What year was it that you said you terminated your activities, in Cook Inlet, in the 40's?

A Oh, I think it was 1942; you see, it is a seasonal thing. When the season was done, at that time, the patrol boat went south and wintered, in Seattle.

Q Did you have any responsibilities, in Cook Inlet, subsequent to 1942?

A Not specifically, until I was transferred to the Washington office, in 1948.

Q By Washington, you refer to the District of Columbia?

A Yes; Washington, D.C.

Q What was your position, then?

A I was—I guess you could call it—Section Chief, in charge of the commercial fisheries. The branch of Alaska Fisheries was divided into two parts, the commercial fisheries and the Pribiloff Island operations. I was in charge, at the staff level, of the commercial fisheries end of it.

Q Did this responsibility include the Cook Inlet area?

A It included all of Alaska, as far as the commercial fisheries was concerned.

Q Generally, what were the functions of your particular job?

[9] A How brief do you want this?

Q Oh, brief enough so that we can get an idea of what you were doing and of what your responsibilities were, for Alaska?

A Essentially, the regulations governing the fisheries of Alaska were amended, annually, on the basis of hearings that were held in certain of the districts, in Alaska, essentially in Juneau, and in Ketchikan, on occasion, and in Anchorage. But the main hearing was held in Seattle, at which time the recommendations of the various agents —each for his district—and the Service, generally, were presented to the canned salmon industry and the fishing public, at public hearings, setting forth what the proposed regulations for the following year would be and the accepting of briefs, from any and all, followed by the acceptance of written briefs, in Washington, D.C., until a deadline, sometime around the first of the ensuing year, the one for which the regulations were to be adopted, so that there was some cutoff point, after which we could draft the regulations and get them published, in the Federal register, and get a regulatory announcement booklet printed, at the Government Printing Office, and distributed to the public.

My duties were to go to Alaska and see how the [10] regulations which we had adopted were working out, whether they accomplished the purpose, for which they were designed, that is, whenever it was possible to get up there, to do this. Somebody had to run the store, in Washington, too, of course; so we divided the duty up. But I attempted to get up there, each year, to see how the regulations were doing and to assist and give advice, and attend the Seattle hearings; and then to review the briefs that were submitted to the Washington office, and then to sit down and translate all of that into a set of regulations, after a consultation with superiors, principally the Assistant Director, in charge of Fisheries, and the Director of the Fish & Wildlife Service, who had the final responsibility, for promulgation of the regulations, as such.

Q Who was the Director, during your tenure?

A There were a number of directors. It is a little difficult to remember them all.

Q Was Albert Day the first Director?

MR. BRADLEY: Objected to as a leading question.

A Do you mean during the time, now, that I worked for them?

Q Yes?

A At the time I went to work, for them, I believe the [11] Director was Dr. Ira Gabrielson. There was another director, and whether he came before or after, I don't know, but then there was Albert Day, who was the Director for a number of years.

Q What was the year you said you terminated this position, in Washington?

A October, 1960. They made a State of Alaska, and of course the control of the fisheries of Alaska went to the new state. I stayed on, to button things up, and to generally help with turning all of our records and our fleet of planes, boats and ships and everything else over to the new state. So I was on, until October of 1960.

Q Did you participate, at all, in the formulation of state regulations, concerning commercial fisheries?

A No.

Q When you were in the Washington D.C. office, did you formulate or was there formulated any policy, concerning foreign fishing activities in Cook Inlet?

A Well, there was really basically no policy to formulate. It was against the law, for an alien to fish in the waters of Alaska.

MR. BRADLEY: I object to the answer as being a legal conclusion.

BY MR. CRANSTON:

Q Putting that, then, in respect to Cook Inlet, was there [12] a policy on this subject?

A Written into the law is a prohibition against aliens fishing, in the waters of Alaska.

Q Was it the policy, while you were in the Washington office, then, to consider Cook Inlet as being those waters?

A Yes.

Q When you refer to Cook Inlet, what area do you have in mind?

A Are you going to refer to this book?

Q If you need it, to refresh your memory. But can you refer to the chart and indicate what you refer to as Cook Inlet?

A Cook Inlet is described in the regulations.

MR. BRADLEY: He is asking you to testify from memory, not from what the regulations—

MR. CRANSTON: Wait! If you have an objection?

MR. BRADLEY: I object.

BY MR. CRANSTON:

Q Would you continue, then; by whatever means you have, to refresh your memory, what you referred to, when you speak of Cook Inlet; that is, if you have to refer to the regulations, to refresh your memory?

A Well, yes, although—

Q In other words, do you have any landmarks to which you refer, when you talk about the Cook Inlet area?

[13] A Yes.
Q To what?
A Cape Douglas and Point Gore.
Q When you referred to Cook Inlet, in your statement regarding the alien fishing, what areas of Cook Inlet did you refer to?
A Well, the whole thing. The description of it is Cape Douglas to Point Gore, including the Barren Islands. We prepared charts, showing those designations.

* * * *

[3] JOHN T. GHARRETT,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?
A John T. Gharrett.
Q And what is your address presently?
A 6171 Leesburg Pike, Falls Church, Virginia, Apartment 530.
Q And what is your business address?
A National Marine Fisheries Service, Washington, D. C.
Q And what is your age?
A I was born in 1909.
Q I guess we can figure it out from there. What is your present occupation?
A I am staff assistant to the Director of the National Marine Fisheries Service.
Q How long have you had that position?
A Two years.
Q Have you ever had a position with the United States [4] Fish and Wild Life Service or any of its predecessor or successor agencies in Alaska?

A Yes.
Q What was that position?
A Two positions. The first one I started out as assistant regional director for coordination and subsequent to that I was regional director of the Alaska region, both the old Bureau and the Commission of Fisheries.
Q State the years that you held each of those positions?
A Roughly about 1956 to 1960.
Q Do you know when you changed from assistant director to director?
A No, I do not. It was about '58, plus or minus a year.
Q Prior to the time you were assistant regional director in Alaska, what job did you have?
A I was the research coordinator for the Pacific Marine Fisheries Commission.
Q And where was that located?
A Headquarters were in Portland, Oregon.
Q Is that where you worked?
A Well, the three states. The Pacific Marine Fisheries Commission was composed of three states; Oregon, Washington and [5] California. My headquarters were in Portland but I worked in the three states.
Q When you were assistant regional director and director in Alaska, where was your base?
A Juneau, Alaska.
Q Did you ever during the time you were in Alaska participate in any Conference with the Canadian Government involving salmon fisheries?
A Yes.
Q Do you recall what year that was?
A Not precisely.
Q Could it have been 1957?
A Yes.
Q Do you know where the Conference was held?
A My recollection is that it was in Seattle.
Q What was the purpose of the Conference, if you can recall?
A The purpose of the Conference was to discuss with the Canadians the possibilities and ways and means of

limiting the expansion of salmon net fisheries in the offshore waters.

Q Did the United States prepare any maps or charts at this Conference or after the Conference?

A Both.

[6] MR. CRANSTON: I would like this Chart 8502 with the following notation in the lower left hand corner, 44-8/4, 9/27; 45-1/9, 7/28; 47-6/30; 9/29 49-6/20; 50-9/4, marked as Defendant's Exhibit 1 for identification.

(The Chart was marked Defendant's Exhibit 1 for identification and is attached to the court copy of the deposition.)

BY MR. CRANSTON:

Q Mr. Gharrett, I am going to hand you what has been marked for identification as Defendant's Exhibit 1, which as you see, is a chart with a line drawn on it and ask you if you recognize this?

A I recognize part of it. This part—

Q You are pointing to—

A —off Copper River. I recognize this area.

MR. BRADLEY: From—

THE WITNESS: From when it was constructed.

MR. BRADLEY: It won't be on the record what you are pointing to. Describe it.

THE WITNESS: Oh, I am pointing to the drawing of the line, dotted line and solid line in different locations of the mouth of the Copper River. I recognize that part. That stays in my mind. The rest probably within reason is what we drew.

BY MR. CRANSTON:

[7] Q By "what we drew," what did you draw. For what purpose did you draw this line?

A This line was drawn as a proposed line beyond which we again proposed to limit the development of the salmon net fisheries by fishermen of the United States.

Q What was your role in the preparation of that line?

A My role was to decide where the line goes.

Q Did you have assistance from anyone?

A Mr. Clay Scutter.

Q Has the line since been given any kind of name?

A Oh, I don't know since. At the time we drew it, rather than to say "a line beyond which we proposed," et cetera, et cetera, we called it the Gharrett-Scutter line for short.

Q In your preparation of the line what criteria did you use for placing the line on the chart?

A We used two basic criteria: 1) we wanted to encompass within the line existing salmon net fisheries along the Coast of Alaska, and 2) we wanted in some areas to allow for a modest, perhaps, expansion of existing fisheries, salmon net fisheries.

Q Are you aware of any other line in addition to the line which you drew as having been drawn and presented to the Canadians?

[8] A Yes. At the meeting which we formerly referred to, to show the thinking of what was being discussed, the Canadian delegates drew a line along Vancouver Island and, I believe, Queen Charlotte Islands on a very small scale map to indicate the thinking, and we at that time as American representatives drew a similar line. I believe it was from Dixon Entrance to Icy Straits.

Q Would there have been any line in addition to the lone [*sic*] on Exhibit 1 drawn from Cape St. Elias to Shumagin Islands of which you are aware?

A Your question is not clear.

Q I am trying to determine whether on the area represented by Defendant's Exhibit 1 if there was any other line drawn?

A On this same chart? in this same area?

Q In this same area and presented to the Canadians?

A No, not that I am aware of.

Q After you drew the line, do you know what its subsequent history was? Do you know if it was presented to the Canadians?

A I do not recollect.

Q Did you have anything to do with it after you drew it?

[9] A I submitted it to the then director of the Bureau of Commercial Fisheries.

Q And after that did you have any further participation in it?

A No, not that I recall.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. BRADLEY:

* * * *

Q Who requested you to draw the lines you did draw in Alaska?

[10] A Mr. William Terry who was a member of the delegation at the meeting previously referred to, the United States delegation.

Q Did you redraw the line that was agreed to in the original meeting?

A Yes, I believe we did. I believe this is only a section of the total that I see here. It is my recollection that the line we drew at the meeting was on such a small chart that it didn't show much more than an indication of what we were thinking about, and I was asked then to draw it on a larger scale chart to show more detail.

Q Did the lines you drew enclose areas in which you knew foreigners had previously fished?

A Yes.

Q By drawing these lines did you intend to stop those fisheries?

A No.

Q Was the line you drew with Mr. Scutter intended to represent the outer limit of the territorial sea?

A No.

Q Was the line you drew with Mr. Scutter intended to represent the base line from which the territorial sea was to be measured?

[11] A No.

Q Were the lines you drew with Mr. Scutter used for law enforcement purposes while you were in Alaska?

A No.

Q Did the line you drew with Mr. Scutter correspond to the outer boundary line of the fishery district created under the provisions of the White Act?

A They may have coincided with them in areas, in some areas, but they were not specifically drawn that way.

Q So they were not intended—

A Not intended. This line was not intended to match in all respects.

Q When you sent the maps on which your lines were drawn to Washington did you include a caveat or disclaimer of any kind?

A Yes. In the letter of transmittal I pointed out this proposed line in our thinking was intended to apply to U.S. fishermen only.

* * * *

[3] DR. ROBERT D. HODGSON,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q State your name, please.

A My name is Robert D. Hodgson.

Q And Mr. Hodgson, what is your address?

A 10720 Joyce Drive, Fairfax, Virginia.

Q That is your residence address?

A That is residence. My office address is Director, Office of The Geographer, Department of State, Washington. D. C.

Q And what is your age?

A Forty-eight.

Q And what is your present occupation?

A I am The Geographer of the Department of State.

Q What is your educational background?

A I have a Bachelor's, Master's and Ph.D. Degrees in Geography, all from the University of Michigan.

Q And have you had any former occupations which make use of this geographical education?

[4] A I was employed during the war as an intelligence officer and as an infantry platoon officer in the Marine Corps. Immediately after the war I went to work for the then War Department as a terrain analyst, a geographer. That was late 1946 to early 1947 in Germany. I taught geography at the University of Michigan from 1947 to 1951. From 1951 to 1952 I was a geographic analyst in the Government. From 1952 to 1957 I was geographic attache in the American Embassy in Bonn. From 1957 to the present I have been in the Office of The Geographer in the Department of State.

Q What particular positions have you held in the Office of The Geographer for the Secretary of State?

A During the first, approximately ten years, until Dr. Pearcy's retirement I was his principal assistant. Since his retirement two years ago I have been The Geographer.

Q Would you describe generally what the function of The Geographer of the United States is, what your duties are?

A Well, the functions of The Geographer are expressed very broadly in the sense that it is in charge of all geographical research required by the Department of State. In actuality it narrows down considerably to cover generally three fields; geographic nomenclate etymology, international boundaries and claims to sovereignty or jurisdiction [5] of national entities. Over the years we have produced many research studies for the Department. Many of them we have put in an unclassified form, either as international boundary studies, which cover land boundaries, or international boundary studies, Series A, which cover limits in the sea. We are essentially the research component concerned with problems in political geography.

Q You have just referred to a research study dealing with limits of the sea?

A Limits of the seas.

Q Do any of these studies within the category, and I believe you used a letter—

A Series A.

Q Series A. Do any of these studies deal with limits of the sea with respect to the coast line of Alaska?

A No. These deal with foreign countries. They are straight baselines, territorial water boundary agreements, or continental shelf boundary agreements made by foreign countries. In our work for the United States we have worked on a series of charts, 155 charts, which depict the U. S. baseline, territorial sea and contiguous elements, and Alaska is covered by those charts.

Q Would you characterize those charts as within the [6] category of research studies on international boundaries or what category in your particular function would you place that work product?

A These would fall into the general category of international boundary work that we would do for the Department of State.

Q With respect to that particular item involving the set of 155 charts, was there, apart from the meetings when these charts were discussed (I assume between you and others on a particular committee), apart from those meetings, was there any independent research that you or your office made concerning the matters pertaining to the coast line of Alaska?

A Well, the production of the maps and the charts was agreed upon, that the committee would follow certain established Federal practices, and that the hydrographic data which was represented on the series of charts that we chose would be accepted as authentic. Now, it was necessary to go beyond this, which would be considered normal mechanical, to determine if the United States had drawn any big closing lines for historic bays or made any other claims to waters of this nature. In this sense we went beyond the practices or beyond the work of the committee. We examined the records of the Department to determine if there had been any claims for [7] historic bays.

Q Was the research which you did in this particular area you have just described made the subject of any

written memoranda or communication by you or by anyone in your Department?

A The results of our work did not result in a written product, no.

Q Did you communicate in any other way except by writing to anyone concerning the results of your research in this particular area?

A We communicated to the then Assistant Legal Adviser, Mr. Yingling, and we also communicated to the members of the committee on the fact that we could find no claims to historic bays in the State of Alaska—

Q All right, I am going to get back—

A —in the records of the Department.

Q I have some specific questions to ask you on these charts and I will get back to that subject in a little while. You stated you had worked with Dr. Pearcy. Aside from this set of 155 charts, which I assume were the ones which were constructed or devised in 1970 and 1971—Is that the time span with which you were involved?

A That is correct.

Q Besides those, had you, during your period of time [8] with the Office of Geographer, ever participated in the drafting of any other charts showing or purporting to show the location of the coast line of Alaska?

A I had worked with Dr. Pearcy earlier on a set of charts illustrating a baseline for the United States if we adopted all of the pertinent sections of the Territorial Sea Convention. It drew in certain areas of the country, certain coastal areas, such as Maine, parts of Louisiana, and it drew certain straight baselines. There was a second set of charts which was done after this in which Dr. Pearcy had done some of the preliminary work and which I completed which were never accepted or never published. Then the third set of charts was the final published charts.

Q You refer to those as the set of 155 charts?

A That is the 155 which were the published charts which were done in 1970, 1971.

Q When was the first study for this first set of charts that you described as showing a possible baseline?

A These were drawn in the period immediately after the signing of the Conventions in 1958 and then in 1960. They were done in the period, I would gather, from 1963 to 1964.

Q Are any of those charts still in existence?

A The original of the charts is.

[9] Q Where are they located?

A I think they are all in my office.

Q Would you have any objection to either Mr. Rhodes or myself looking at those charts in your office?

A I would have no objection to that.

MR. CRANSTON: Mr. Charney, would you have any objection?

MR. CHARNEY: No.

BY MR. CRANSTON:

Q Now, when was the second set of charts that you described constructed?

A The second set of charts would have been started, I believe, somewhere around 1967 or 1968.

Q And, again, what was the intended purpose for your constructing these charts?

A I am not sure in my own mind exactly what the basis for it was. It was a request that was placed on Dr. Pearcy and I assisted him. I think the request came from the Coast Guard. The charts were not completed. I believe the Alaskan area was never finished.

Q And do these charts still exist?

A I think we have most of them but I wouldn't want to say we have all of them. I believe we have most of them because several of them were worked over for the latter set [10] of maps, and this set may not be complete.

Q Would there be any objection to Mr. Rhodes or myself examining these charts in your office?

A I would have no objection.

MR. CRANSTON: Mr. Charney, do you have any objection?

MR. CHARNEY: No objection.

BY MR. CRANSTON:

Q What was the name of the committee or the group which formulated the set of 155 charts?

A The full name of it, I am not sure exactly what it is. It is in my records. I referred to this as a Baselines Committee. It was a committee on the establishment of the baseline of the United States or something of sorts. How does that ring with you? I just don't remember the full name. Having gotten down to the point of working for a year, we referred to it just as the "Baseline Committee."

Q And you were on this Committee, is that correct?

A I was on that Committee.

Q What was your particular function on this Committee?

A It was my responsibility to produce the basic charts, the compilation, to determine the bay closing lines and the river closing lines and such other permitted closing lines, and to draw the Territorial Sea and Contiguous Zone of the United [11] States. I would do this in manuscript and submit it to the Committee. I would defend the lines that I had drawn. If there was an agreement for revision of the lines that I had drawn, then I made the revisions and represented them to the Committee to make sure the work was completed. From there they went to the National Ocean Survey for drafting and photography and printing.

Q Were there other members on this Committee?

A Yes. There were representatives from the Department of Justice, Department of Interior, Treasury, Commerce and State. That is all, I believe. All Federal offices with an interest in the law of the sea were invited to attend.

Q Do you know why, for instance, the Department of Justice was participating in this Committee?

A Well, the Department of Justice was participating because it is interested in the law of the sea as it is applied to the United States.

MR. CRANSTON: Would you mark an exhibit, for me, please. This is two documents stapled together; one document from Maurice Stans, Secretary of Commerce, to William P. Rogers, Secretary of State, dated May 26th,

1970, with another document stapled to it headed the "Department of State, The Legal Adviser; Memorandum to Mr. Neuman," with copies to Mr. Hodgson. [12] You can mark this as the exhibit.

(Documents marked Defendant Hodgson's Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q Dr. Hodgson—Do you prefer to be referred to as Doctor?

A Any way you desire.

Q I wish you would look at the second page of this exhibit and I ask you if you have ever seen this?

A I probably have. I am almost positive I have, yes.

Q Who is the writer of that?

A Tex was—let me see if I can recall his name—Harris. What was Harris' first name? His last name was Harris. He was Special Assistant to the Legal Adviser.

Q Who is Mr. Neuman?

A Mr. Neuman, at the time, was the Assistant Legal Adviser for Political, Military and Ocean Affairs.

Q Was it your understanding, then, that the Department of Justice was to be represented on this Committee because of—I refer to the last sentence in the first paragraph—It has its "lawsuits against most of the coastal states"?

A This certainly is a part of it, but our interest in having Justice on board, and Justice was on an informal group that met on the early charts, was their knowledge of the [13] Supreme Court cases which had come about and which decisions had been made, such as in California, as to how we should draw the baseline in these areas.

Q But it was in part because of the pending litigation, you would say?

A I would say that it was in part because of litigation existing and pending.

Q What was the date that the Committee first met, approximately? When did this group organize?

A The time span of this is right about this time. It

is mid-1970. I think the Committee got its start probably about May or June of 1970.

MR. CRANSTON: Could you mark as Deposition Exhibit 2 a memorandum dated August 7th, 1970, to "Members, LOS Task Force Executive Operations Group," Carl F. Salans, Acting Legal Adviser.

(Document marked Defendant Hodgson's Exhibit No. 2 for identification.)

BY MR. CRANSTON:

Q Dr. Hodgson, I will hand you what has been marked as Deposition Exhibit 2. If you want, you may look it over.

A All right, sir.

Q Do those individuals who are listed at the bottom of [14] page 1 and the top of page 2 represent those persons who actually were members of the Baseline Committee?

A The membership of the Baseline Committee varies over the period of time. This is essentially the group that met in the beginning.

Q Can you, with respect to the beginning of the—

A Beginning with the Department of State, Mr. Shamwell and myself were at virtually every meeting. The Department of Justice, Mr. Swarth and Mr. Carney were at virtually every meeting. The Department of Interior, Mr. Cotter was at virtually every meeting. At one period he was also assisted by a chap from the then Bureau of Commercial Fisheries. The Department of Commerce, Admiral Nygren attended sporadically. Hugh Dolan attended almost continuously. In addition, the chap in charge of the charting section who did the drafting on the maps attended virtually almost every time, and in addition there was a young National Ocean Survey officer who attended. Under Transportation, Admiral Morrison and Captain Bursley attended the first several meetings and then didn't attend beyond that. Lieutenant Michael Reed attended virtually every meeting or was replaced by a Deputy during the latter sessions. So, essentially, with the exception of the Admirals and the

Captains, these were the people who met almost continuously.

[15] Q You referred to somebody from the Bureau of Commercial Fisheries. Do you remember who that was?

A I don't remember his name but I could look it up in the records.

Q Does he reside here in Washington or elsewhere?

A He did at the time but I haven't seen him recently. I don't know whether he is still here or whether he has left the Government service.

Q Now, in the Department of Justice were there ever any other individuals except Mr. Swarth or Mr. Charney on the Committee?

A Bruce Rashkow attended several meetings. It is possible that Michael Reed attended one meeting or so.

Q Is this Michael Reed the same—

A After he left the Coast Guard. But that would be it. It would be Mr. Swarth and Mr. Charney.

Q In other words, Lieutenant Michael Reed, who was with the Department of Transportation, later went to the Department of Justice?

A Yes.

Q And appeared on the Committee?

A I believe he appeared at least at one meeting and he may have appeared at two.

[16] Q Who appointed the members of the Committee?

A The members of the Committee were appointed by the individual Departments.

Q I see. In other words, you were appointed by the Secretary of State?

A Appointed by the Department, yes, sir, along with Mr. Shamwell to represent the Department in the operations.

Q Did the Committee have a chairman?

A Yes, Mr. Shamwell was chairman.

Q And what is his function or what was his function in the Department of State at the time?

A At the time he was Attorney Adviser in the Office, the Assistant Legal Adviser for Ocean Affairs. When the

first memorandum came, it was called political and military and oceans. And then later it was divided between two Assistant Advisers, one for military and one for ocean affairs, was in ocean affairs.

Q Has the work of this Committee been completed?

A No, the work of the Committee still goes on because the charts, as it states on them, are preliminary and subject to change in information. They will be reviewed. Whenever a new chart is published, for example, which will show a new depiction of the coast line, the outer limit of the [17] territorial sea, and the contiguous zone should be changed and will be changed. I will do the work. The Committee will be called together for review and then the sheet will be published as a revised sheet.

Q Has the Committee met since the formulation of the 155 charts as they presently exist?

A Yes, it has met several times because several sheets, I believe there are four of them, are in the process of revision. On one there was an error wherein the three-mile territorial sea was omitted. On a second sheet—these two are in Alaska—information has come to our attention that what was symbolized as a submerged rock is a low tide elevation. So we are changing these two charts for Alaska.

Q Would you know what particular portions of Alaska these charts relate to?

A One of them is in the southwest corner of the Alexander Archipelago, and the second is in the northeast corner of the Gulf of Alaska.

Q Would it be east of the Cook Inlet area?

A Yes, it is east of the Cook Inlet area.

Q Would you characterize it as being near Yakutat?

A It is an isolated large-scale chart which is east of —I can't remember the name of the big inlet which is at [18] just the northern point of the Gulf of Alaska.

Q Prince William Sound?

A Just east of Prince William Sound. Thank you.

Q I see.

A And one of the symbols on the chart indicated that a feature was a submerged rock, and it proved to be a

drying feature and we extended the territorial sea in that area.

Q What was the problem down in the Alexander Archipelago?

A In the original drafting by the Coast Survey of our work sheet they failed to copy the three-mile territorial sea about several small islands. The 12-mile contiguous zone is on the charts. I didn't catch it in the review and, consequently the sheet was published without a territorial sea limit on it.

Q You earlier indicated, I believe, that the Committee's decisions were intended to be only provisional, is that correct?

A That is correct.

MR. CRANSTON: Would you mark as Deposition Exhibit 3 a three-page, undated document entitled, "LOS Task Force Committee on the Delimitation of the Coastline of the United States."

[19] (Document marked Defendant Hodgson's Exhibit No. 3 for identification.)

BY MR. CRANSTON:

Q All right, Dr. Hodgson, I will hand you Deposition Exhibit 3. You may take some time and look it over, if you wish.

A Yes.

Q You have read the memorandum?

A I have.

Q Does this memorandum express fairly well the purpose and duties, and objectives of the Baseline Committee?

A Yes, I would say so.

Q All right, I would refer you to page 3. Let me first ask you, have you ever seen this document before today?

A Yes, yes.

Q Can you tell me something concerning its origin. In other words, do you know who drafted it?

A It was drafted by the Baseline Committee as a statement of its purposes and functions.

Q Was it drafted at one of the first meetings of the Committee?

A One of the early meetings.

Q Was it sent to any other agencies of the representative [20] agencies in order to advise those agencies what the Committee was doing?

A Well, it was sent to all agencies which had representation on the Baseline Committee.

Q For instance, who in the Department of State would have received this memorandum?

A Well, I would have received it. Mr. Shamwell would have directed it to the Assistant Legal Adviser for Ocean Affairs. It may or may not have been to Mr. Steven's office, the Legal Adviser. I don't know. It would have also been seen in State and was also seen by the Special Assistant for Fisheries and Wild Life.

Q This would have been Mr. McKernan?

A Mr. McKernan because members of his staff sat in on various meetings at various times.

Q Do you know and if you don't know, of course, simply say so, do you know who in the Department of Justice may have received this memorandum?

A I wouldn't have the faintest idea other than Mr. Swarth and Mr. Charney.

Q Do you know of any representative agencies that suggested modifications or in any way criticized the functions of the Committee and its purposes as they are set forth in [21] this memorandum?

A If I understand your question correctly; there were many changes which were made and which were suggested in the language for various purposes by various people, but I wouldn't specifically remember as to whether I would make a suggestion of one form and someone else would make one of another. I know that, for example, the then Coast Survey, now National Ocean Survey, every time the word "map" was used it was insisted it had to be changed to "chart." But there were substantive changes which were proposed by, I presume, every office. I don't remember the details anymore.

Q Were those changes incorporated in a memorandum which superseded this memorandum?

A I think this is the final one, if I remember correctly. I would have to check with my records to find out. Since it is undated I find it—

Q Would you be willing upon request of the State at this time to search your records to determine whether or not this memorandum is represented by or superseded-by some other memorandum?

A I would be willing, yes.

MR. CRANSTON: Mr. Charney, do you have any objection to this?

[22] MR. CHARNEY: No.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q I will refer you to this sentence on page 3. It appears in the paragraph that is continuing over from page 2. This sentence: "It is not intended that the charts resulting from the Committee's work will be circulated throughout the Government, even as a provisional United States position, but rather will be available for use when current and pressing problems arise. Such use will be conditional by the relevant caveats." Did any of the representative agencies or departments suggest a revision in that particular portion of the memorandum?

A I don't remember specifically but it is obvious that some did.

Q Why is it obvious?

A Because they were published.

Q Would the fact that you suggest be reflected in any written correspondence between you or any other member of the Committee and the Committee or any other agency and the Committee?

A I don't think it would be. I just don't know. I could check to find out, but I don't know.

[23] Q Let me back up. You say that charts were, in fact, published?

A Yes, the 155 charts were published. They are available.

Q Do you know, then, from what agency the suggestion would have come to publish the charts; that is, which would have reflected a modification of this memorandum?

A I wouldn't specifically know but I can think of two that would require a change. One would be myself in the Department of State where we were receiving many requests from foreign governments for charts, and the second would be from the Coast Guard which was after a set of charts which they could use for law enforcement.

Q Do you recall yourself specifying any particular change in this one paragraph?

A I don't recall. It was so long ago.

Q But I assume that when this particular memorandum was drafted you participated in the formulation of it, did you not?

A Yes.

Q So, at the time this memorandum was drafted it had your approval, is that correct?

MR. CHARNEY: Objection.

[24] MR. CRANSTON: May he answer that question?

MR. CHARNEY: Yes.

THE WITNESS: I don't recall. To be honest with you, I don't recall.

BY MR. CRANSTON:

Q Do you ever recall disapproving this memorandum?

A I would have to examine the records of my office to determine if there are any marks which were made on this paper which are in my handwriting for me to know.

• • • •

[25] Q Would you agree with this, Dr. Hodgson, that if this sentence which we are discussing was changed that it was a rather basic and important change relative to the functions of the Committee as outlined in this memorandum?

A Not basically in the functions of the office but certainly in the utilization of the work of the office.

Q You say it would not be important as to the work utilization?

A It would not be a major change in the basic functions of the Committee whose purpose was to draw upon a set of large-scale charts U.S. baselines, Territorial Sea and Contiguous Zone. Under either premise we would do the same work. But with the change in this, the work

would go from either just a single manuscript copy or a limited number of manuscript copies held in a limited number of areas to a published work with wide distribution. There certainly is a very different view in the use of the Committee's work but not in the Committee's work per se.

Q So you would agree that it is a rather substantial change relative to the utilization of the Committee's work product?

[26] A Yes.

Q And at this point you cannot tell me, then, first, if there was any authorization and, secondly, who may have authorized the particular change reflected with regard to this sentence?

A No, I cannot.

Q Did this Committee consider among other aspects of the coast of the United States the location of the coast line in Cook Inlet, Alaska?

A It did.

Q Did you know when you were on this Committee that either at its inception or at any time subsequent during its existence and before the distribution of these maps that there was pending litigation between the State of Alaska and the United States Government relative to the status of Cook Inlet as inland waters?

A I knew that there was a difference of opinion between the State and the Federal Government concerning the status of Cook Inlet because Mr. Yingling had asked our office to do research on the records of the Department as to whether we could find any indication of an historic claim. I don't know whether I knew before the Committee started that there was pending litigation, but I certainly knew during the period of the [27] litigation.

Q Would you have any idea at what time during the— For instance, as I understand, the Committee met every so often and you considered selected portions of the United States coast, did you not?

A Portions which I had completed since the previous meeting, yes.

Q Now, at the time of the discussions of the Cook Inlet portion, would you say that you were aware of the pending litigation?

A I can't specifically say.

Q It might aid you if I told you that the Cook Inlet portion of the coast was discussed on August 31, 1970, and, apparently, the first meeting of the Committee was on June 1, 1970?

A I would think by August I was aware of it, yes.

MR. CRANSTON: I would like marked as Deposition Exhibit 4 a memorandum dated December 29th, 1949, to L/P-General Snow, OIR/GE-Mr. Boggs, and others, from UF/-Dr. Chapman. "Subject: Charts of U.S. Coasts Showing Limits of Territorial Waters."

(Document marked Defendant Hodgson's Exhibit No. 4 for identification.)

BY MR. CRANSTON:

[28] Q All right, Dr. Hodgson, I will hand you this memorandum marked as Exhibit 4. I apologize for its rather faded character but this is the best that the Department of State could furnish us. I would ask you to take some time and read it. Have you read it?

A I have read it.

Q Let me note that my research indicates that Dr. Chapman was Special Assistant to the Under Secretary for Fish and Wild Life, and that this memorandum concerned a proposal to the Coast and Geodetic Survey that charts as to limits of territorial waters be drafted. Let me also note that the memorandum was written during pending litigation between the United States and California. Now, let me ask you one question. Was Mr. Boggs at that time The Geographer for the United States?

A Yes, he was.

Q Did he hold essentially the same position that you do now?

A Yes, he did.

Q All right, let me ask you this question relative to the statement made after the numeral two on page 1 and continuing over to page 2, which states, "There may be

some question of propriety for a Federal Agency to publish such an overprinted [29] line with a case turning upon the position of the line now in litigation with the Government as party to this suit. It is to be noted that the 1930 Series of Coast and Geodetic Charts as cited by the Government in its present brief as evidence of the position of the line." Do you disagree with the conclusion which Dr. Chapman stated relative to the propriety in publishing an overprinted line as to the location of a coast line when that coast line is in dispute between the State involved and the Federal Government?

MR. CHARNEY: Objection.

MR. CRANSTON: May he answer the question?

MR. CHARNEY: Yes.

THE WITNESS: I don't know on what basis Dr. Chapman was questioning the propriety. If it is a question of legal, then I am not a lawyer. I am not in a position to answer the question. If it is a question of bureaucratic propriety, I would disagree with him. I would say that the Federal Government had every right to go ahead and print such a set of maps, recognizing that if the Supreme Court litigation was to the contrary that the maps would have to be changed?

BY MR. CRANSTON:

Q Let me ask you this, if you know. Do you know whether or not there was a set of maps or charts of the United [30] States coast showing limits of territorial waters printed subsequent to December 29, 1949, and before the distribution of the set of 155 charts?

A There was not to my knowledge.

Q In other words, you feel that what may have been an impropriety with respect to California is a propriety with respect to Alaska?

MR. CHARNEY: Objection.

Q Do you see any distinctions between California in 1949 and Alaska in 1971?

THE WITNESS: I don't know that the charts were not made for the reason which is suggested.

BY MR. CRANSTON:

Q Let me ask you this: Are you aware that the chart drafted by the Baseline Committee has been submitted by the United States Government in this case as an exhibit, Exhibit No. 73?

A I was not aware of it but I would expect it would be.

Q Would you then expect that it would be the function of this Committee through the drafting of the chart as it affects Cook Inlet to attempt to influence the court relative to any decision it might reach in this litigation—

MR. CHARNEY: Objection.

BY MR. CRANSTON:

Q —that is pending?

[31] MR. CHARNEY: Objection.

MR. CRANSTON: May he answer the question?

MR. CHARNEY: Yes.

THE WITNESS: Would you restate the question?

MR. CRANSTON: Read the question back.

(Question read)

THE WITNESS: I would say that the function of the Committee and the manner in which the Committee proceeded was not intended to exert any influence on the court or upon any questions at hand. It was to produce a series of charts which portrayed the U.S. Baseline, Territorial Sea and Contiguous Zone according to the tenents of the Geneva Convention on the Territorial Sea and the Contiguous Zone applying United States' stated policy decisions to the best of our manner. The idea of myself, for example, as the principal drawer of lines on the charts, was that I would in no way influence nor intended to influence any decision of the court.

• • • •

[32] Q Let me ask you this: Were you aware at the time the chart was prepared in August of 1970 as to Cook Inlet where the Federal Government in this litigation claimed the closure line of Cook Inlet to be?

A The chart, the Alaska chart, was probably prepared long before August, 1970. I don't know the date that it

was prepared. But in the go-around, the work which led to the final printing of maps, I began with Alaska. We were, as I recall, completed with the Aleutians when we were presented with the formidable task of trying to do a new series of the One Hundred and Fifty Thousands which cover the northern coast of Alaska, and we decided that we would switch to the Atlantic Coast because it was needed and we started on the Atlantic Coast before we completed the Alaskan charts. Then there was a request that we complete the Alaska charts because I believe it was Senator Stevens who had asked in one of the Commerce subcommittee meetings what would be the effect of the President's seabed proposal on, for example, the State of Alaska. So we were asked to produce a map. To do this we had to go back and complete the Alaskan series so that we could determine what the Alaskan territorial sea was as far as bay coastlines, and so on, and to put this on another chart within [33] the Continental Shelf so that we could present it to Senator Stevens. Consequently, the Alaskan charts were begun far before the period of August of 1970.

• • • •

[34] THE WITNESS: Going back to the original question of propriety versus impropriety, if it is a question of legal propriety, again, I am not in a position to answer this. In a question of bureaucratic propriety, we were in the process of evolving or devolving a set of baseline charts for the United States. The series of charts did not have their genesis because of the court case. They had their genesis in the need for these charts by the Coast Guard and by the Department of State to give to foreign fishermen. Consequently, the production of the charts and their ultimate use by the Department of Justice in this suit, I don't think is bureaucratically improper. If we were to produce a series of charts specifically for that purpose, then there might be a question of impropriety.

Q Let me ask this: Did you ever know, either personally or by reputation, Dr. Chapman who wrote this memorandum Exhibit 4?

A I knew him just in passing.

[35] Q Do you know whether or not he was a lawyer?

A To my knowledge, he was a marine biologist. He was a Fishery Man.

Q Would you believe, then, in paragraph two when he is talking of propriety, he is referring to, as what you refer to, as bureaucratic propriety rather than legal propriety?

MR. CHARNEY: Objection.

MR. CRANSTON: May he answer?

MR. CHARNEY: Yes.

THE WITNESS: I have no idea what Dr. Chapman had in mind in submitting it to the Legal Adviser. This would raise the question of legal in my mind.

BY MR. CRANSTON:

Q You testified that you would expect the chart to be filed in this case, did you not, earlier?

A I don't know whether I used the word "expect" or I used the word "anticipate," but I would anticipate that it might be.

Q So, you, yourself, then would feel that there is nothing wrong with the United States attempting to use the work product of this Committee deliberating after the filing of this lawsuit to influence the court in its decision in this case?

[36] MR. CHARNEY: Objection.

MR. CRANSTON: Do you want to read the question back?

(Question read)

THE WITNESS: The set of maps as were produced, reflected the position of the Federal Government in relationship to the baseline, the territorial seas and contiguous zone of the United States. As a result, they are published documents. They are published documents of the Federal Government. They are available as evidence. I would assume that they could be used.

BY MR. CRANSTON:

Q So then, you do not disagree with that question? In other words, you see no impropriety from a bureaucratic standpoint—

A I see no basic problem.

Q —in the use of this document attempting to influence the decision of the court?

MR. CHARNEY: Objection.

MR. CRANSTON: All right. May he answer?

MR. CHARNEY: Yes.

THE WITNESS: I see no basic problem.

MR. CRANSTON: Would you mark as Defendant's Exhibit 5 a set of two documents which bear the notation on the right- [37] hand margin "U. S. Exhibit 73 (P.1)" and another document with a notation in the right-hand margin, "U. S. Exhibit No. 73 (P.2)," the first one being a chart of "Cook Inlet, Southern Part, U. S. Coast and Geodetic Survey Chart 8554, 11th edition, April 1/70, corrected through notice to Mariners 16/70"; and the chart with the notation Exhibit 73 (P.2) being "U. S. Coast and Geodetic Survey Chart 8553, 11th Edition, January 17th/70, corrected through notice to Mariners 3/70," and each of them containing a box with the heading: "Caution: This Document Is Not For Use In Navigation," with a text underneath. Let us call five, page 1, 5(a) and page 2, 5(b).

(Documents marked Defendant's Hodgson's Exhibit No. 5(a) and 5(b) for identification.)

BY MR. CRANSTON:

Q All right, Dr. Hodgson, I will hand you what has been marked Defendant's Exhibit 5(a) and 5(b) which is also the United States Exhibit 73 in this litigation, and I ask you if you recognize them?

A Yes, these are duplicate copies of two of the charts of the baseline maps of the United States.

Q And these are the charts, are they not, which represent the work product of the Baseline Committee?

A They are two of the chart, yes, sir.

[38] Q Now, do you recall whether or not you participated in any of the discussions of the Interdepartmental Committee relative to the drafting of this particular set of two charts?

A I drafted this set of two charts.

Q Now, by that, do you mean that you physically placed the lines which appear in black upon the charts? Or, I guess what I want to know is, what do you mean when you say you drafted them? What did you do?

A I did the basic compilation work which was taking the original master copy and putting upon it the pencil lines for the bay closing lines, the three-mile territorial sea, and for the 12-mile contiguous zone. These were presented to the Committee. I can't honestly tell you, I believe that the changes may have been made on some of these sheets—I don't remember specifically, but—

Q Let me ask this: If changes were made from what your proposal in the form of penciled lines was, have you stated accurately what you did? You placed pencil lines.

A Yes.

Q If there were any changes made with regard to your penciled lines, would those changes and the reasons for them have appeared in the minutes of the meeting at which these charts were discussed?

[39] A If there were changes, it would be, yes. They should be in the minutes.

MR. CRANSTON: Would you please mark as Defendant's Deposition Exhibit 6 this document consisting of numerous pages with a preface, "Ad Hoc Committee Demarcation of the United States Boundaries, Minutes of June 1, 1970, Meeting," and with documents thereafter consisting of minutes of subsequent meetings through and including January 4th, 1971. There is also appended to this set of minutes a document consisting of four pages headed, "U. S. Baseline Documents" with numbers, edition date and revised printed date.

(Document marked Defendant Hodgson's Exhibit No. 6 for identification.)

BY MR. CRANSTON:

Q Dr. Hodgson, near the middle of this exhibit, I will hand it to you, are the minutes for the August 31, 1970, meeting.

A August 30.

Q August 31?

A All right, I have found it.

Q All right. On page 2 of those minutes, Item 8 refers to chart Nos. 8553 and 8554. Do you want to take some time? You may refer to that. Have you familiarized yourself with [40] the reference?

A No, sir, I haven't gotten up to the—

Q My question is respecting the notation in the minutes of the August 31 meeting at paragraph eight. Would the variance or the revision referred to in those minutes be only revision which was made concerning the penciled work product which you furnished the Committee?

A It should be, yes.

Q Do you recall that there were any other revisions which the Committee discussed?

A I just don't recall.

Q But you do indicate that if there had been that it would most likely have been reflected in the minutes?

A That is correct.

Q Now, when you prepared your penciled work product with respect to these exhibits, what criteria did you use in order to determine where in Cook Inlet the baseline should be located?

A The criterion that we used on drawing bay closing lines was the 45-degree test which is mentioned in here. In this closing of Cook Inlet on one of the earlier series of maps we had drawn a line similar to this in the sense that we had gone from Harriet Point to Kalgin Island over to the [41] east shore but it was north of the point that was chosen here. In experimenting and developing out from this line and experimenting, this line gave, it was felt, the maximum amount of water which could be included in the 24-mile fallback line.

Q Mechanically, what did you rely on for your basic criteria when you drew these lines? Did you have any reference to any legal documents or any other matters which you considered when you placed these lines on the chart?

A No, I had no reference to anything written in that sense other than the previous set of charts. Now, as to any mechanical devices, we didn't use any. We did it on the basis of visual observations and had one been able to draw a 24-mile line across, not using the islands, it

would have been obvious that we would have had to make some form of measurement.

Q I guess maybe I am not making my question clear. Maybe I can approach it this way. What caused you at the outset concern with the 24-mile line? What started you out—

A I am sorry. Okay. In looking at this I concluded that Cook Inlet was an over-large bay and in the Territorial Sea Convention you are permitted to close off an over-large bay with a 24-mile closing line and this has been one of our policy agreements or one of our agreements in the drawing of [42] the lines in on the charts. So we sought a 24-mile fallback line in the idea that Cook Inlet was an over-large bay.

Q Is this term "over-large bay" a word of art in your profession or what do you mean by that?

A It is a coastal feature which has the characteristics of a bay but which the closing line across the natural entrance points would be greater than the 24 miles permitted by the Convention and we would then be permitted to fall back.

Q In other words, you would term any bay which has a closure line in excess of 24 miles, and I guess assuming that it meets the semicircle and the semicircle test in an over-large bay, is that how you characterize the definition of an over-large bay?

A Yes, provided that it contained landlocked waters as well.

Q In other words, part of the definition of an over-large bay is that it is landlocked?

A Yes. That it contained landlocked waters.

Q What is your definition of landlocked waters?

A Landlocked waters are waters which are sufficiently closely linked with the land so as to be considered to be a part of or enclosed by the land.

Q Is this the definition that by referring to Cook [43] Inlet as an over-large bay you apply to Cook Inlet?

A Yes.

Q Now, I assume, then, when you referred to the use of a reliance upon and recognition of a 24-mile—a reference to a 24-mile line that, you were referring to the Convention on the Territorial Sea and Contiguous Zone, is that true?

A That is correct.

Q Now, when you constructed your penciled lines in Cook Inlet, did you consider or rely upon the provisions contained in Article 7, Section 6 of the Convention on the Territorial Sea Contiguous Zone which makes provision for historic bays?

A No.

Q That is to say that when you prepared your lines that you made no reference to any of the historic activities which the United States engaged upon or may have engaged upon in Cook Inlet?

A I think I stated earlier that we had been asked at one time by Mr. Yingling to examine the Department's records if the United States had claimed Cook Inlet as a historic bay. In that the essence of our examination was negative, we considered it then to be a geographical feature at which we could draw a 24-mile closure.

[44] Q You then relied in this particular facet of your work, that is the historic bay aspect, if any, as to Cook Inlet, you relied on the work product of the Office of Legal Adviser for whatever input they might give to aid you, is that correct?

A That is correct.

Q You did no independent research yourself into this matter?

A This was a task which Pearcy and I both worked on. I examined the records which our office has maintained more or less continuously back into the '20's. Dr. Pearcy was to examine the records of the Department. Now, what procedures he followed, I don't know. This was done while he was still there. I reported my findings as negative. I know we informed Mr. Yingling that they were negative. And we did not find any claim to Cook Inlet as a historic bay and—

Q What sort of records, what was the nature of the records that you examined? I assume by the words "our office" you are referring to the Office of The Geographer?

A Yes.

Q What sort of records were you examining?

A We were examining memoranda, correspondence, formally prepared papers, letters and the like.

[45] Q Are the records which you examined still in your office? Or had they been retired to some other agency of the Department for the Government?

A No, they should still be all there. We have not retired this section of our files.

Q What is the volume of these records, if you can estimate?

A Oh, it is a part of a file drawer.

Q Two linear feet, maybe?

A Less, probably.

Q And that would be the extent of the records which you examined in your office?

A Which I examined.

Q Yes. Are any of these records classified, restricted?

A I am sure that some are.

Q Would you have any objection to those which are not classified or restricted for allowing either Mr. Rhodes or myself to examine those records?

A I would have no objection providing I have sufficient advance warning to go through them and to remove classified material.

MR. CRANSTON: Mr. Charney, do you have any objection?

[46] MR. CHARNEY: I would like to ask Dr. Hodgson a question.

MR. CRANSTON: Yes.

MR. CHARNEY: Dr. Hodgson, do those records include correspondence with the Department of Justice?

THE WITNESS: Oh, yes, I am sure they do.

MR. CHARNEY: Concerning cases in litigation at the time they were written?

THE WITNESS: Probably.

MR. CRANSTON: Do you want to read back that exchange, please.

(Record read)

MR. CHARNEY: I won't permit those to be divulged. I don't know the nature of the other documents and I cannot answer at this time as to the others.

BY MR. CRANSTON:

Q You said you found no evidence of a claim in your files. When you talk about a claim are you referring to a statement by either the Secretary of State or the President that in so many words in writing we claim that Cook Inlet is a historic bay of the United States and that this has in some way been disseminated publicly? Is that the sort of thing you were looking for?

A Yes. And listings of historic bays or claims to [47] historic bays like waters which the United States may have made giving specific listings prepared by competent authorities.

Q Did you look for any material other than that which might have been used as evidence to support a claim for a historic bay as distinguished from a claim, itself?

A Our files would not ordinarily carry an extensive amount of that type of material.

Q You say they would not ordinarily. Do you recall whether in this particular case they did or they didn't?

A I don't recall.

Q What generally was the nature of the materials that you did look through? What type of general material was it, would it have been, for instance, correspondence between the State Department and the Bureau of Commercial Fisheries or Fish and Wild Life Service? Would that normally be contained in your file?

A There would be some of this. There would be reporting. There would be research documents. There would be memoranda from the Legal Adviser to someone else, to another office, perhaps to us. The files applied to the United States Territorial Sea; consequently, they would cover a wide range of material from a wide range of sources. There might even be newspaper clippings in it.

[48] Q Would interdepartmental correspondence of some other department such as Interior or Commerce or any of its sub-agencies appear in your file to any great extent?

A Not to any great extent. By that, if you mean from Interior to Interior or Interior to Commerce, not to any great detail.

Q Or even subagencies of Interior such as Interior Fish and Wild Life Servive to Interior something else?

A No, there would not be.

Q Now, you stated that Dr. Pearcy researched other records of the State Department, is that correct?

A That is my understanding.

Q Is it fair to say that generally for purposes of your drawing these charts which are represented by Exhibits 5(a) and 5(b), that your primary reliance was upon the response received in this area, that is the historic bay aspect from the Office of Legal Adviser and Mr. Yingling?

A There is a letter in the files from the Legal Adviser named Mr. Chayes.

Q To Mr. Barry?

A To the Attorney General, I believe, which indicated that the Department of State could not consider the historic claim of Cook Inlet to be valid.

[49] Q Would this letter, do you recall, have been written sometime around 1962?

A Mr. Chayes was appointed by Mr. Kennedy so it would be in that period of time.

Q And apart from what you have testified to today, you considered nothing else concerning the historic bay aspect of Cook Inlet?

A I did not do a full archival search for material.

Q Was the potential status or possible status of Cook Inlet as a historic bay or any other matters relating to the subject of historic bays and Cook Inlet discussed at any of the meetings of the Baseline Committee?

A Yes. It was discussed at several of them because the drawing of the closing line, for example, across Long Island Sound is dependent upon its being considered by the U.S. Court to be historic bay like.

Q My question simply referred to Cook Inlet and not to other bays.

A No. No. I am not sure that the subject ever arose in the sense that I had the data or felt I had the data which indicated that the Department of State did not consider it to be a historic bay and consequently I treated it strictly as a geographic feature.

[50] Q And then the Committee, in turn, with the one exception which we discussed earlier in Chinitna Bay relied upon your work product?

A If that is what the minutes indicate that is my recollection.

Q Now, would you turn to the minutes of the meeting that would appear near the end of the exhibit which I gave you of December 7th, 1970, and if you would just consult those pages and also the minutes of January 4th, 1971.

A All right.

Q Those minutes generally, do they not, refer to the status of waters off the east coast and particularly Long Island by virtue of a historic bay treatment?

A This was the ultimate decision. I was making my case as reflected in the minutes on the basis of geographic considerations in which I virtually, unanimously by agreement was overruled.

Q Now, had the possibility of Cook Inlet's status as a historic bay been discussed by the Committee would similar minutes noting that possibility have appeared in the minutes of the Cook Inlet discussion?

A Yes, they should.

Q Now, let us refer again to Exhibit 5(a) and 5(b). I [51] would direct your attention to the 24-mile fallback line. Is the line insofar as it is drawn from the east shore of the Inlet, that is slightly north of a community, Ninilchik, is the point where that fallback line intersects the shore based on any prominent shore line feature in the inlet?

A No.

Q What is the basis upon which you concluded that the southeast point of the line should reach the shore at Ninilchik?

A Because the sum of the length of the line extending from Harriet Point to the unnamed point on Kalgin Island and then from the unnamed southeast point on Kalgin Island, the sum total of these two lines to this point of reference, Ninilchik is 24 nautical miles.

Q Then it is not a point that is chosen because it might be discernable and recognizable as a shore line feature, for instance, to a mariner fishing in Cook Inlet?

A No, it was chosen to include the maximum amount of water within Cook Inlet within a 24-mile line.

Q Is this a point which a mariner on Cook Inlet might be able to discern as a point marking the termination of the 24-mile fallback line in Cook Inlet?

A No.

* * * *

[54] Q Dr. Hodgson, in the matter of Long Island Sound which you state was ultimately decided to be historic waters, is that a fair statement of the decision of the Committee?

A Well, a historic bay like a body of water, you know.

Q Did you find or are you aware that anyone else on [55] the Committee found evidence of a claim by the United States to Long Island Sound as historic waters?

A Well, the term "historic waters" always confuses me. My understanding is that one can claim a historic bay but not a historic sea or historic strait or what-have-you. It is restricted to historic bays, and that claims are to bay or bay-like bodies of water. And our treatment of bays is that they are historic bays or bay-like waters. I don't know what you mean by historic waters.

Q Well, did you consider Long Island Sound as a bay-like water?

A This was the pronunciation as I recall it, of the court in the 19th Century that found Long Island Sound bay-like and to be historic.

Q In other words, is it a fair statement, then, to say that the decision as to Long Island Sound was based upon a court decision?

MR. CHARNEY: Objection.

MR. CRANSTON: All right. Well, can he answer the question?

MR. CHARNEY: Okay.

THE WITNESS: Well, you are asking me to give the reasons of the individuals who voted for it versus myself who [56] voted against a line. And it is rather difficult for me to say what motivated each individual. I tried to maintain that because of the geographic size of Long Island and the narrowness of the water body which separated it from the mainlaind in the west that Long Island Sound was geographically a bay, and that a line should be drawn from Watch Hill Point to Montauk Point which

would include not only all of what is Long Island Sound but a large segment of what is listed as Block Island Sound. The mass of the Committee did not agree with my presentation unless it was agreed by myself that East River was indeed a river. And I said that East River was not a river. It was a tidal estuary; whereupon, the whole geographic case collapsed and then it went back to the point that the only line that could be drawn was one drawn on the basis of historicity of a historic bay. And the case, as I recall, specified Orient Point on Long Island and Fishers Island which was at New York on the northeast extremity of the Sound and then I drew a line between Orient Point and Fishers Island which met the criteria that we have been using in the past.

Q You have used the term "historicity." Do you know whether or not included within this historicity, which I take to be a mass of data or the entire historic aspect of it, was [57] a written statement by the Secretary of State or the President giving due notoriety to foreign governments and others that Long Island Sound is a historic bay or is claimed by the United States to be its inland water or any similar type document?

A The evidence, as I recall, was from various sources. One was a court case which occurred, as I recall, around the Civil War. The second was correspondence in the Executive Department. I don't recall whether it was in the Secretary of State or the Attorney General or the Legal Adviser to the Attorney General or one of those two people to someone else, but there were letters in the file indicating this. and it was also listed in quite a few books, Jessup's as I recall, "Historic Waters" and it was listed in the United Nations documents that were prepared on historic bays for the 1958 Convention.

* * * *

[59]

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. CHARNEY:

* * * *

[111] Q Do they illustrate policy decision?

A Yes, this is their purpose, is to illustrate policy decisions which have been made by the United States Government [112] concerning its territorial sea and contiguous zone.

Q When you speak of the United States Government, what are you speaking of?

A In this establishment of the limits of the United States, I am speaking primarily of the Executive Offices of the President and of the Department of State. It is considered that the establishment of the boundaries of the United States falls within the purview of foreign relations.

Q What would happen if the United States changed its policy in respect to the limits of the territorial sea upon the location of a baseline?

A These charts would be revised as soon as possible or practical, I should think.

Q Are these 155 documents including Defendant's Deposition Exhibits 5(a) and (b) for sale to the general public?

A They are for sale through the National Ocean Survey in Rockville, Maryland.

Q Are they for sale to foreigners for foreign governments?

A They are for unrestricted sale for anyone who cares to purchase them.

Q Have they been distributed to any foreign governments?

A They have been.

[113] Q Who has distributed them?

A My office has distributed copies to the Governments of Canada, United Kingdom, Poland, Soviet Union, in their entirety; and there was a plan, I don't know whether it was ever consummated, for their transferal to the east coast of the United States to the Government of Cuba which was not done by my office but by the Office of Coordinator for Cuban Affairs. Consequently I don't know whether they ever did it. I know they intended to.

Q Why were these documents given to foreign governments?

A Because we had specific requests from these governments for the charts because of fishing activities of their nationals. The Canadian Government received them, not because of the fishing activities, but because of their interest in the United States territorial sea and contiguous zone.

Q What relation do these maps have to the fishery activities of these foreign nationals?

A In depicting the outer limit of the contiguous zone, they depict the United States exclusive fishery zone.

Q If other foreign governments asked for descriptions for the limits of the territorial sea or contiguous zone of the United States, what would the response of the Department of State be?

[114] A Well, the response of the Department would probably be to submit to the Government a set of these charts and say that these charts are a depiction thereof.

* * * *

[144]

FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

* * * *

Q All right, looking at Exhibit No. 5, Dr. Hodgson, would you characterize, first of all, Cook Inlet as being an avenue which would lend itself to foreign commerce, or a bay which would lend itself to foreign commerce or a way between nations?

A In the last sense, "in a way between nations," the [145] answer would be no. In the sense of foreign commerce it depends upon your definition of foreign commerce that any ship coming out of there going to a foreign area would be foreign commerce I assume. Coming from a foreign area to here, I presume would be. As an avenue to another nation other than called for by the last two, no.

Q Is that statement you made because Cook Inlet is actually in essence surrounded by land of the State of

Alaska? You have used the term "landlocked." Landlocked within the State of Alaska?

A The answer to the question I gave is primarily that it is a bay contained within a territory of one state or one nation. And this is not a direct access going from its mouth to its head to a foreign country.

Q All right, but you have—

MR. CHARNEY: Off the record a second.

(Discussion off the record.)

BY MR. CRANSTON:

Q You have used the term "landlocked" as applicable to Cook Inlet, have you not?

A Yes, I did use it.

Q Now, in referring to the land, I suppose, within which it is locked you are referring to land of the State of [146] Alaska?

A Yes.

Q There is no other land which would apply to Cook Inlet?

A No.

Q You indicated that you had discussed this case with foreign governments. At least my notes indicate you have testified in this area. Have you, in fact, discussed this case with members of foreign governments?

A I have not. I don't believe that I answered that I had discussed the case with foreign governments. As I recall the context, I was asked the question of would or did foreign countries watch litigation such as this for examples or for specific data on national claims and I answered yes.

Q Specifically not litigation such as this, but this litigation, have you been made aware or are you aware of any interests specifically indicated by foreign nations in this litigation?

A No.

Q Are you aware that this litigation is a dispute between the United States and the State of Alaska concerning the right to exploit the resources of the sea bed of lower Cook Inlet?

[147] A I haven't read the charges or the briefs, whatever you refer them to these as. I was under the impression it concerned the matter of whether Cook Inlet was internal waters of the State of Alaska or the United States or if they were territorial waters or contiguous zone. One of the aspects of it would certainly be the exploitation of the sources of the sea bed, so it would be a matter of fishing, particularly in the contiguous zone area or the high seas area which has been the Inlet according to our definition.

Q Are you aware that the genesis of this lawsuit was based upon a dispute between the state and federal government as to who was entitled to issue leases to the land submerged in lower Cook Inlet? Just answer me that. Were you aware that this was the genesis of this lawsuit?

A I was aware it was one of the principal things. I am not aware of the fact it was the genesis.

Q You have testified to some knowledge relative to attitudes of foreign nations in these areas. Is there anything that a foreign nation would be interested in relative to the rights of the United States or the State of Alaska to exploit resources such as oil? Does it concern a foreign nation whether the state has this right or whether the federal government has this right?

[148] A No. It would not in the depth of waters which are here indicated in the Cook Inlet.

Q Now, you have testified concerning what I suppose you had referred to as policy of the Department of State concerning the position of the United States on territorial waters. Do you, yourself, Dr. Hodgson, make this policy?

A No, I do not. I have been the Research Division and the Research Division is not in what is essentially the policy area of the Department.

Q So that any statement that you make concerning these matters is not an origin or fountainhead of policy, is that correct?

A Well, if I understand your question, if I quote someone who has made a policy statement, it would still

reflect the policy but I as the origin, as a point of origin, I am not essentially a policy-making officer.

Q So, any policy to which you have testified concerning this litigation does not originate with you as the policy-maker?

A Well, that which originated within my capacity of the chief drafting officer, so to speak, would be reflected in policy only after it was approved by the Committee and later by the Law of the Sea Task Force. I may have originated it but I would not be essentially attributed as the policy maker.

[149] Q For instance, you would not be the one if a claim were to be made to an area as historic waters, you would not be the one to make the claim, is that correct?

A I would not be the one.

Q Would you suspect that a claim to historic waters in any area would depend upon a consideration of facts relating to the history of that area? Would it be normal for a claim to be based upon history?

A For a claim to historic waters?

Q Yes.

A I would say activities of the state through history, yes.

Q In the case of the State Department, would all of the history upon which a claim would be based necessarily originate within the State Department or could other government agencies have a part in the history-making process?

A Other agencies and other departments could have a part.

Q Would it be the natural and normal thing that they would have a part if we are talking about history?

A In the activities these would be conducted by the individuals outside of the Department of State, by agencies outside the Department of State and by the Department of State [150] itself.

Q Would it also be normal that in determining whether a claim would lie to a historic water, to a water as historic, that a natural source for this history would

be the agency of the government responsible for fishing activity?

A This would be one source, yes.

Q Now, in all of the policy which you have discussed and testified to here today, have you considered or are you aware that any other person in the Department of State has considered the history of Cook Inlet, let's say, since 1867; when the area was ceded by Russia to the United States?

A Have we considered the general history or historic activity? I am not quite sure I—

Q Are you aware that the historic activities of the United States in this area, if indeed there have been any activities, I am not asking you to tell me whether there have been, but are you aware that the historic activities, if any, by the United States Government or any of these agencies we just discussed were considered by the Department of State in reaching its policy that you have testified to?

A You are asking me to testify on what evidence was, shall I say accepted, versus what was presented by the people who make the policy decision. I can't answer the question. I [151] know that information was furnished and on fishing activities of the United States, Alaskan and other United States' fishing groups. I know that information was considered of foreign fishing. I do not know the total mass of information which was submitted nor that which was the determining factor in the decision, if, indeed, a positive decision was made.

Q All I am asking you, you have testified to policy and what the policy of the United States Government is with respect to territorial waters, 24-mile closures, straight baselines. Are you, yourself, aware of any input, if we may use that word, to this policy of the State Department based on the historic activities of the United States agencies in Cook Inlet?

A During our Committee examination of the Alaskan question in particular in the recent months since the government has written there has been a considerable discussion of fishing activities in the Alexander Archipelago

or other areas of Alaska during the period when Alaska was a Territory.

Q Were you aware of any such discussions that took place, say, prior to 1970?

A No, I am not because at the time of the initial examination of the records which I spoke of that Dr. Pearcy and I made it was relatively a long time ago at which time I was assistant or a deputy to Dr. Pearcy and I was not involved in [152] the high level discussions that I currently am. Now, having worked with the evidence as I said I had, I presented my part of it to Dr. Pearcy who presented his part to Mr. Yingling and Mr. Yingling presumably then presented this package on to whoever made the decision or however the procedure was. I was not in the ultimate stages at that time.

Q Should it be the policy of the United States Government to deny the history that may have taken place in an area such as Cook Inlet relative to its qualification as historic waters? "To deny," I mean to completely cast aside, pay no attention to.

A I think all evidence should be evaluated and weighted and put into the eventual formula which determines policy.

Q So you would agree that history should not be denied, is that correct?

A I would say that historical factors are part of an equation.

Q Are you aware that all of the historical factors have been made part of the Cook Inlet equation as that equation now stands in the U.S. State Department?

A I have no way of knowing whether all factors are presented on any case.

Q So your testimony relative to policy has been at least [153] in ignorance in this one area as to what relative facts and history have been considered, is that correct?

A That's correct.

Q We had some very interesting, and I defer to your knowledge of the geographic technicalities as to what differentiates an inlet from a bay, from a river and

even from a ditch. I certainly am not in a position intellectually to dispute your conclusions. However, would you agree that to a layman some of these distinctions would not necessarily be as apparent as they are to you?

A I would suspect so. It is a very interesting development of a language to know of people's concepts of specific generics. I don't want to philosophize on it but I would suspect, yes, that some people would call a bay what I would not call a bay and some people might find it difficult to differentiate when a creek stops and a river starts.

Q Is it even possible to hypothesize that in a body of water which has a tidal range of 38 feet, which in winter ice flows move, actually flow, that to a layman such an occurrence might be characterized as a river?

A I would doubt it because of scale. By that I mean dimensions, and the tidal range is so great I think most laymen would think of it as an arm of the sea. Rather than as a phys- [154] ical feature of the land.

Q Let me toss in another fact; that some of the water is characteristically almost mud colored, does not share the color of sea water. All I am asking you, sir, is it not possible that a layman not as well educated as you could reach this conclusion? Not that all would, but is it not possible that some might?

A One cannot deny anything, I don't think.

Q So you do admit to the possibility, do you not?

A Well, obviously someone has if the State of Alaska says it is a river.

Q I am not asking you to—

A I don't mean to be smart, but I can't—

Q I am just simply trying to suggest geographic criteria which might lead an individual to reach this conclusion. Or physical criteria, if we may?

A I think almost everyone acknowledges that a river has certain characteristics of being a river, and part of this is a matter of its natural flow of water; that a stream of water which is generated from a pump is not a river, cannot be a river because it is not natural; that a river essentially is a means of transporting water from a higher elevation to a lower elevation; that virtually all rivers

have parallel banks; virtually [155] all rivers have a certain range of dimensions to which they are acceptable. Now, the term "river" may be applied to a stream which is fifty yards across or a hundred yards across or a mile across. Most people don't refer to a river as a body of water which has an average width of 20 or 30 or 40 miles.

Q But I am just suggesting, do not some of the characteristics of a river, could they not to a layman seem to be apparent in Cook Inlet?

A I find it difficult to conceive of it because I find it difficult to put away my own knowledge.

Q But attempting to do this just as a hypothesis and thinking in terms of perhaps even an uneducated seaman, is not this possible?

A I would think not a seaman. Certainly, an uneducated individual who didn't know very much about coastal areas and coastal features could conceivably consider it to be the mouth of a river.

Q You testified to the fact that the set of 155 charts had been sent to the State of Alaska, is that correct?

A Yes, that is correct.

Q And do you know to whom in the state the charts were sent?

A The original request which I serviced was from the [156] Governor's office and we addressed them to Governor Egan's office. The second request for charts which was received by another office other than mine was to someone in the Governor's office. I don't know to whom. We sent the second set of charts to the individual. The first set went to the Governor; the second one to somebody else. I don't know who.

* * * *

[157] Q With respect to Cook Inlet, I believe you testified there was no discussion of historicity there either, was there, in the 155 charts?

A There was no discussion, I don't believe, in the framework of the Committee because of my knowledge of the Department's attitude as reflected in Mr. Chayes' letter and other data or conversations which I had within the Department that would lead me to have considered historicity at the time [158] I was drawing it .

Q I gather from your testimony concerning the boundary agreement between Connecticut and New York as to Long Island Sound, which was subsequently approved by Congress, that some agency other than the Executive may determine the status of waters as a historic bay, is that correct?

A One of the pieces of evidence that was considered was the New York-Connecticut state boundary and it is the responsibility of the states to determine their boundaries with other states, speaking here of the states of the union, and for Congress to approve these directly or indirectly and for the Supreme Court to adjudicate it in the case of difference of opinion. In the New York-Connecticut boundary, the boundary was extended from the land through what I believe is called Fishing Sound to place Fishing Sound in the adjacent islands within the State of New York.

Q So what you are saying is some other branch of the government such as Congress may through its action obtain a result that waters which might otherwise not be inland waters are inland waters and I refer again to Long Island Sound and the approval by Congress of the Connecticut-New York boundary agreement?

MR. CHARNEY: To the extent that the Alaska objection to [159] opinions of Dr. Hodgson on legal conclusions is sustained, we would like to make this objection without waiving our original claims.

BY MR. CRANSTON:

Q In other words, you have referred to this now. Are you saying that branches of the government other than the Executive may through their action achieve this result?

A Yes.

Q So, as an official of the State Department you do recognize that the sole distinction as to the status of waters as historic bays does not rest exclusively with the Department of State or the Executive?

A Yes.

Q Incidentally, did New York or Connecticut obtain a greater area of inland waters by virtue of the treatment

of Long Island Sound as a historic bay or a historic bay-like body of water? Was the amount of inland waters to either state enlarged by virtue of this result? In other words, were waters made inland which by virtue of other application of the strict adherence to the 24-mile closure line and semicircle test or other subjective criteria, were the inland waters of the state increased?

A The answer to this is yes.

[160] Q Now, I think we can put this aside. I want to refer to the map which has the Canadian vessel sightings on it.

MR. CHARNEY: That was it.

MR. CRANSTON: Oh. All right.

BY MR. CRANSTON:

Q All right, Dr. Hodgson, I would refer you to Plaintiff's Exhibit 5, and ask you if your construction of this exhibit was based solely upon the information you derived or solely upon the information contained in the deposition of Bernard Scud and Exhibit 3 to that deposition?

A The limits of the fishing areas with statistics 260, 270 and so on, were partially in the testimony and partially on another map which I believe I saw a number on it, that it was No. 70 or something like this of the Federal—yes, that is it.

Q So you placed the figures 260, 261, 271 and 272 on this exhibit based on information contained in U.S. Exhibit No. 79, is that correct?

A That is correct. And certainly the testimony which was in Mr. Scud's statement. That 272, for example, was Kachemak Bay and 271 was the northern part of Shelikof Strait which is not apparent from this map.

MR. CHARNEY: Can we identify "this map."

[161] THE WITNESS: I'm sorry. This map which is Exhibit, U.S. Exhibit No. 79.

MR. CHARNEY: May I also, in order to connect this up, say this was Scud's Deposition Exhibit No. 5.

BY MR. CRANSTON:

Q Now, relative to the existence or location of the vessels which you described in your testimony relative to Plaintiff's Exhibit 5, did you rely solely upon the statements contained in Mr. Scud's deposition U.S. Exhibit 80 and Exhibit 3 to that deposition?

A Yes.

Q Did you—

A Oh, I beg your pardon. And information which is printed on the chart which I think is inherent, perhaps inherent in the question. Some of them said it was between the moraine lines or located by the intersection of two moraine lines. This information is on the chart.

Q Relative to the existence or location of these vessels did you make any objective determinations of your own?

A There are subjective judgments on my own in the sense that where it would indicate it was between moraine lines and give two values and say in the middle of Cook Inlet I would make a subjective judgment as to where the middle of Cook Inlet [162] was.

Q Now, if there is any inaccuracy relative to the location of these vessels, and I am not suggesting to you that there is, but if there should be, take this as a hypothetical, if there should be any inaccuracy as to the location of these vessels, or even their existence in Cook Inlet as set forth on any of the exhibits we have discussed, U.S. Exhibit No. 80, Exhibit 3 to the deposition of Bernard Scud, the deposition of Bernard Scud himself, would those inaccuracies be reflected in Exhibit 5 to your deposition, Plaintiff's Exhibit 5 to your deposition?

A They would.

Q This exhibit, then, is not intended by you, I take it, to be any sort of verification of the truth or accuracy of the documents upon which you relied in its preparation, is that correct?

A It is a plotting of the information which is in these documents.

Q But it is not an independent verification of the accuracy of that data?

A Oh, no.

• • • •

[163] Q I am unable to locate in the log, and I would ask your pardon for not being able to do so, where on the log we find the azimuth 267? What particular reference in the log—

A The azimuth here. It should be in the log in two—separate places. On the righthand page here it is, "Alter course to 267 degrees at 0930 hours" here—

Q By "here," you are pointing to—

A I am pointing to the lefthand page which is dated the 6th of April, 1962 in the box marked by the ninth hour under course, there is a change of course from 297 degrees to 267 degrees.

Q I see. That figure to me looked like a 207 in the block after nine in the column entitled "Course." It is a six?

A It is a six, yes.

Q Let me just ask this, how do you determine it is a six when to me it looks like a zero?

A Well, it looked like a six to me and it was verified as 267 on the other page, on the righthand page of the log where it is "altered course to 267," the seven is even drawn with a slash through it which is common for non-American writers [164] of English.

Q Again, you will excuse the obstinancy, but I would like to hand you my copy of this exhibit and ask you if in the column entitled "Course" after the hour nine the figure is more likely to be a six than a zero? Now, maybe there is some other copy of the log that is more legible than that?

A Well, I read it to be 267 because the top of the—what you are calling zero here is going up to the top of the page and not terminating as it does in the 201 and I interpreted that to be a six in which the top, either it was not printed because of the lightness of the ink originally or because of the failure in the Xeroxing, so I interpreted this to be a change of course to 267, particularly when it was verified.

Q Let me ask you with respect to the page I have just shown you, the 6th day of April, 1962 from the log, did you see any entry which was on any other copy

which was more clearly a six than what appears on my copy of the exhibit?

A I am afraid I don't understand your question.

Q Well, did you see any other copy of this log upon which the figure in that column after the hour nine is more clearly a six than appears on my exhibit?

A I will look at the copy which I used. On my copy it looks like essentially the same as it is on this copy. By that, [165] I mean the one which was marked with the deposition that has the beginning of a tail or the beginning of an upward stroke, which the 201 in the eleventh hour column does not have.

Q At any rate, you based your conclusion as to the course and relying upon a document which is similar and no more clear than the exhibit which is furnished the State, is that correct?

A Similar to furnished to the State.

Q Is it any clearer, the one that you based your determination on than what the State has? Can you answer the question?

A My answer to the question is that my copy is virtually identical to yours.

Q What copy has been furnished that will be attached to the deposition?

A This is the one with the writing on it.

Q And you have examined the copy that will be furnished as an exhibit to the deposition. You say that is essentially similar?

A That is it, yes (referring to Plaintiff's Hodgson Deposition Exhibit 8, for identification).

Q Let me ask one other question at this time. Do you know whether the vessel whose course you have plotted here was fishing at the time?

[166] A The only information I have is what was in the log.

Q Does the log indicate?

A The log says "Continued searching for—(I have difficulty reading it upside down). "Continued searching for fish group" in the hour blocked from four to eight.

Q Now, do you know whether or not this vessel whose course you plotted was in fishing parlance known as a

mother ship or as an actual catcher boat? Would not this log indicate that that is a mother ship looking for her catcher boats or fish groups?

A The indication is that it is a mother ship. The "Continued searching fish group" indicated to me that it was either in itself seeking for its own fishing or for the direction of subsidiary craft.

Q Do you consider yourself to be an expert in whether or not from a ship's log you can tell whether a Japanese vessel is fishing or whether it is looking for a catcher boat?

A From the log as it is here you can't tell.

Q Do you have any expertise in this area?

A No, sir.

Q You earlier referred to this vessel, I believe, in your testimony as a fishing vessel. Now, you did not then intend to characterize it either as a vessel which was then [167] fishing or as a catcher boat based with a Japanese mother ship?

A I did not intend to characterize it, no.

Q Now, as to this course which you have plotted, did you put any of your own subjective judgment into the plot or did you rely solely upon the information that appears on the ship's log?

A There is an indication of subjective judgment in putting the two courses in as to which of the two Capes was the one referred to in the log. To minimize my subjective judgment I put both courses in.

Q Do you know ultimately what happened, what the result of this vessel's activities was?

A Well, I believe it was seized or some of its craft was seized by the State of Alaska, was it not?

Q I am just asking you.

A I believe it was. I believe it was seized in the Shelikof Strait.

Q Are you aware whether as a result of this seizure the United States ever made a formal apology to whatever government was then in power in Japan?

A I am not aware of the results.

Q Do you know anything concerning the activities of the State Department as result of the seizure of Japan-

ese vessels [168] in Shelikof Strait by the State of Alaska?

A My remembrance of the incident, it is many years ago, is that the ship was released, as I recall, at the request of the Department of State officials. I don't know what procedures were followed. I don't remember. It has been too long ago.

• • • •

Q All right, we may remove these exhibits and go on to [169] some more. I will refer to the document which has been stipulated to as being an exhibit to other depositions in this case, the depositions being those of Mr. Terry, Mr. Kirkness, Mr. Gharrett and Mr. Nabb. Have you ever read or are you familiar with a regulation promulgated by the Department of Interior in 1957 which defined the waters of Alaska, the regulation appearing at 50 CFC Section 210.10?

A Not specifically.

Q Do you know anything concerning the definition given the waters of Alaska by that regulation?

A No.

Q Are you prepared to say that the exhibit to which I just referred as being an exhibit to other depositions and with this black line drawn on it is not an accurate representation of the waters of Alaska as defined in that regulation?

A I am not in any position to say it because I don't know the language of the regulation.

Q So nothing that you testified to concerning this exhibit in any way is an attempt or a judgment by you that this was an incorrect graphic representation of the provisions of that regulation?

A I don't know the regulations. I am not in a position to say.

[170] Q Well, you couldn't have then intended your testimony which you have just given concerning this exhibit to be an attempt to state that this line is not a graphic representation of that regulation because you don't know the regulation. Your testimony didn't even affect that regulation or relate to it?

A That's correct.

Q Was your testimony concerning the appropriateness of this line, which is the black line with various dotted lines, based upon any knowledge you might have concerning activities of the United States in the enforcement of fishery regulations in the waters involved?

A May I ask you to repeat the question.

(The question read.)

THE WITNESS: No. My comments were not intended to refer to fisheries regulations or fisheries conservation practices or anything of that nature. I spoke of my remarks in the sense of their appropriateness or non-appropriateness as straight baseline systems for the measurements of the territorial seas.

BY MR. CRANSTON:

Q Your testimony then was solely a sterile application of your concept of what would be appropriate straight baselines and did not consider or did not intend to consider any other criteria which may have involved this line such as fishery [171] regulations of the United States Government?

A My comments were referred to in the sense of the straight baseline system.

Q And that is all they were?

A The existence or non-existence of such a system at approximately this time, solely.

Q Solely straight baseline, nothing else? You shook your head in the affirmative.

A I'm sorry. Yes, that is correct.

* * * *

[174] Q Do you know whether or not with regard to this exhibit which we have referred to as being Exhibit 2 to an exhibit to the Terry, Kirkness, Gharrett and Nabb depositions, do you know whether or not an individual then with the U.S. State Department named William Harrington had anything to do with this exhibit?

A I don't know who had anything to do with this exhibit other than all my recollection, other than the brief recollection I have of the one document that someone

of the Office of Fish and Wildlife, Special Assistant, submitted it to Ottawa. It may have been Mr. Harrington. He was in the office at that [175] time.

Q So you are not testifying there is no State Department involvement with this exhibit, is that correct?

A My understanding it was transferred to the Canadian Government by the American Embassy in Ottawa.

Q Did you ever see the letter of transmittal from the Embassy in Ottawa to the Canadian Government? You testified you had seen some letters of transmittal?

A I have seen the aerogram transmitting it to Ottawa.

Q From State?

A From State.

Q And beyond that you have seen nothing?

A I have seen nothing else.

* * * *

[3] WALTER KIRKNESS,

a witness in the above-entitled cause, was called for examination by counsel for Defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?

A Walter Kirkness.

Q What is your address?

A 6212 Beechway Drive, Falls Church, Virginia.

Q What is your business address?

A It is National Marine Fishery Service, NOAA, Department of Commerce, Interior Building, Washington, D. C.

Q What is your present age?

A Fifty-one.

Q What is your present occupation?

A I am Acting Associate Director for Resource Management, National Marine Fishery Service.

Q Have you ever had any occupations which dealt with Alaska fisheries or Alaska fish and wildlife?

A Yes.

Q And starting from the earliest occupation you had [4] in this area, would you describe it and continue on through the last?

A Okay. In 1950 I was employed by Territory of Alaska Department of Fisheries as a fisheries biologist. I served with the Territory Department of Fisheries until Alaska became a state in various capacities, and I continued to serve with the State of Alaska through July of 1967. Since 1967 I have been associated with the Bureau of Commercial Fisheries and the National Marine Fishery Service in various programs which dealt with Alaska.

Q When you were with the Territorial Board of Fisheries, you say?

A Department of Fisheries.

Q Where were you stationed?

A Juneau.

Q And when Alaska became a state what were your duties and where were you stationed?

A When Alaska became a state in 1959 I was made Director of the Division of Commercial Fisheries.

Q For the State?

A For the State of Alaska.

Q And were you stationed in Juneau?

A In Juneau.

[5] Q And then would you give each position you held for the State Department of Fisheries subsequent to that time?

A In September, 1961, I was appointed Commissioner for the Department of Fish and Game and I held this position until July of 1967.

Q You were then employed by the Alaska Department of Fish and Game when C. L. Anderson was Commissioner?

A Yes.

Q And, again, what was your position under him?

A I had various positions. He was head of the Department from the time I joined them in 1950. But in 1959

through 1961, September of 1961, I was the Director of the Division of Commercial Fisheries.

Q And you moved immediately from your position as Director of the Division of the Bureau of Commercial Fisheries to the Commissioner's post?

A That is right.

MR. CRANSTON: I would like to have a series of letters marked as Defendant's Exhibit 1 to this deposition. The first letter is dated January 8th, 1960, from C. L. Anderson, Commissioner, Alaska Department of Fish and Game, to John Gharrett, Regional Director. I would also like to have included in this series a letter from John I. Hodges, Acting [6] Chief, Division of Resource Management, to Regional Director, Bureau of Commercial Fisheries; and a second letter from John Gharett to Mr. C. L. Anderson.

(Letters marked Defendant's Deposition Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q I would like to ask you to look over this correspondence and familiarize yourself with it.

A All right.

Q I would ask if when you served with the Alaska Department of Fish and Game you were familiar with the problems discussed in this correspondence?

A Yes.

Q And were you made aware of any charts which were furnished the Alaska Department of Fish and Game pursuant to this correspondence?

A Yes, I was.

MR. CRANSTON: I would like to have Coast and Geodetic Survey Chart 8502 with the notation in the lower left-hand corner, 44-8/4, 9/27; 49-1/9, 7/28; 47-6/30, 9/29; 49-6/20; 50-9/4 marked as Defendant's Exhibit 2 for identification.

(Chart marked Defendant's Deposition Exhibit No. 2 for identification.)

[7] BY MR. CRANSTON:

Q Mr. Kirkness, I will place before you what has been identified as Defendant's Exhibit 2 which is a chart of Alaska, South Coast, Cape St. Elias to Shumagin Island with a line drawn on it, and I ask you if this would represent a portion of the chart submitted to the Alaska Department of Fish and Game as disclosed by the correspondence in Deposition Exhibit 1?

A I don't recall whether the specific line was drawn on Shelikof Strait at that time on the charts we received.

Q With the exception of the Shelikof Strait area would the—

A Well, I would say, that, you know, that was ten years ago, or eleven years ago. I don't recall the exact points that they ran to, but it looks much the same as I recall it. But I don't recall the exact line, itself, or from what point to what point it ran.

Q All right. But to the best of your memory, do you recall any specific differences where you would question whether this chart is different from the one which you were furnished?

A I couldn't recall any differences.

Q All right. Would you discuss the problem which was [8] faced by the Alaska Department of Fish and Game which necessitated the request for a chart?

A Well, there were several problems. One of them, of course, was that the State was involved in the dispute with the Canadians over the so-called surf line. There was a joint committee appointed to meet with the Canadians which the State is a co-equal partner with the Federal Government. There is one Federal employee and one State employee. So, we have to get our case ready for th Canadians. The other problem was, what was the official designation of territorial water for the State of Alaska for enforcement purposes.

Q Did the State use the charts furnished by the Federal Government with respect to each of those two areas?

A Yes, it did.

Q When you were involved with the State Department of Fish and Game, did the State enforce fishery laws and regulations of the State in Cook Inlet?

A Yes.

Q And over what portions of Cook Inlet did the State enforce its fishery laws and regulations?

A Over all portions that commercial fishing was allowed.

Q Did the area of enforcement depend on the distance from the shore line of Cook Inlet in which the fishing activity [9] was carried on?

A No. As I recall the Cook Inlet regulatory area, I believe, went from somewhere near Elizabeth Island or Chugach Island to Cape Douglas. That is my recollection of the regulatory area, and fishing was allowed in various bays throughout this area.

Q Did the State enforce fishery laws and regulations against Citizens of Oregon and Washington and other States throughout the entire regulatory area?

A Yes, they did.

Q And was the manner in which the State enforced its fishery laws and regulations made known to agencies of the United States Government?

A What do you mean by that?

Q Well, was the United States Government, the Bureau of Commercial Fisheries, or any other agency aware of the method and manner through which the State fishery laws and regulations were enforced?

A Well, first, we didn't make any point of keeping them advised. I mean, that wasn't our job. But the Federal officials were fully aware of how it was being enforced because it was the same way they did it.

Q Did the State Department of Fish and Game ever [10] receive any objection or criticism from the Federal Government regarding the manner in which the State was enforcing its laws and regulations?

A No.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. BRADLEY:

• • • •

[12] Q Had you seen these maps prior to having received them in the State, in the '60's, 1960's?

A Well, I think that I recollect seeing them before they were actually sent, but the time interval, I am not certain of.

Q Was the location of these lines notorious throughout the Territory of Alaska prior to their transmittal to the State?

A Notorious?

Q Notorious in that they were well known?

A When you say "well known," do you mean well known to the general public?

Q Yes.

A I would say they were not well known to the general public.

Q When you received these maps, did you protest the placement of these lines to the Federal Government, the placement of the specific lines through any means?

A We protested but not on what you would call a high plane official level. We protested locally to the Bureau of Commercial Fisheries that the lines in many places were much too conservative.

[13] Q Did you change these lines prior to use in Alaska?

A Prior to the use by the State?

Q Yes.

A There are possibly some changes and I don't recall whether they were actually made or not, or whether these were—we did draw certain lines and which liberalized to some degree where we thought the base line should be. But I can't recall whether any charts were presented with these lines on them or not.

Q But for your purposes you liberalized these lines to some degree?

A Well, when you say for our purposes, how do you mean? What do you mean "for our purposes"?

Q For the uses that you employed these maps for.

A I don't think I could recall whether or not we did.

MR. BRADLEY: No further questions.

FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Just one. Mr. Kirkness, we were discussing whether or not these lines were well known or not, and you testified they were not well known to members of the general public. Were they well known to members of agencies whose responsibilities were the management and enforcment of fishery laws?

[14] A I think that would have to be an assumption on my part because up to the time we had received control in January of 1960, I do not know what circulation they received within the Coast Guard or the Bureau of Commercial Fisheries.

Q Were they well known to the members of the Alaska Territorial Agencies?

A I would say that they were not well known since the Alaska Territorial Agencies had no regulatory functions.

Q And members of the fish community, those who were engaged in the trade of commercial fishing, do you know if they were aware of—

A To the best of my knowledge, the Bureau of Commercial Fisheries never issued printed copies to the public.

* * * *

[3] WALTER KIRKNESS,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Give your name, please?

A Walter Kirkness.

Q What is your address?

A My home address?
Q Yes.
A 6212 Beachway Drive, Falls Church, Virginia.
Q And your business address?
A NOAA. National Marine Fishery Service and National Oceanic and Atmospheric Agency.
MR. CHARNEY: Administration.
THE WITNESS: What did I say? Agency? Okay. Administration. Of the Department of Commerce, Washington, D. C.

BY MR. CRANSTON:

Q Your present age is what?
A 51.
Q And your present occupation?
[4] A Do you want a title?
Q Yes.
A Acting Associate Director for Resource Management for National Marine Fishery Service.
Q Now, you are the same individual named Walter Kirkness, are you not, who testified earlier in this case at a deposition on September 28th, 1971?
A Yes.
Q All right, I won't repeat to any great extent your past employment history but would you state briefly what positions you have formerly held with the Alaska Department of Fish and Game?
A I was Commissioner from September of 1961 to July of 1967 and approximately from 1958 to the time I was appointed Commissioner I was Director of the Division of Commercial Fisheries. Previous to that I was a senior fisheries biologist in research in the Alaska Department of Fish and Game.
MR. CRANSTON: Would you mark these as Deposition Exhibit 1, please. This is a letter from C. L. Anderson, Commissioner of Alaska, Department of Fish and Game, to Mr. John Gharrett, Regional Director, Bureau of Commercial Fisheries, dated January 8th, 1960.

(Letter marked Defendant's Deposition Exhibit No. 1 for identification.)

[5] BY MR. CRANSTON:

Q Mr. Kirkness, I am handing you what has been marked as Defendant's Exhibit 1 and I believe you have seen this letter before, have you not?
A Yes.
Q I refer to the dictation symbol—
MR. CHARNEY: This is Deposition Exhibit 1?
MR. CRANSTON: Yes.

BY MR. CRANSTON:

Q I refer to the dictation symbol in the lower left-hand corner. What did the initials W.K." indicate?
A They are my initials and the "kp"—well, okay.
Q All right, "kp" is the secretary, then, is that correct?
A Yes.
Q Now, did you prepare this letter?
A I believe I did.
Q Is that what your initials down in the lower left-hand corner indicate?
A Yes. That is the initials of my secretary at that time.
Q You prepared it and Commissioner Anderson signed it?
A Correct.
[6] Q Now, does the fact you prepared it indicate that you were primarily responsible for obtaining the materials which are described in the letter?
MR. BRADLEY: Leading. Object, please.

BY MR. CRANSTON:

Q You may go ahead and answer, please.
A What am I supposed to do?
MR. BRADLEY: You can answer.
THE WITNESS: Okay. Yes, the Division that I was in charge of at that time, the Division of Commercial Fisheries, assigned me the responsibility of obtaining these charts.

BY MR. CRANSTON:

Q Now, do you recall whether the Federal Government or Mr. Gharrett made a written response to you

referring to overlays to charts delineating a baseline along the coast of Alaska?

A Well, I have seen the correspondence at the last deposition in which he replied.

MR. CRANSTON: I would have this letter, then, from Mr. John Gharrett, Regional Director, to Mr. C. L. Anderson, Commissioner of Alaska Department of Fish and Game, dated January 29th, 1960, marked as Defendant's Exhibit 2, please.

(Letter marked Defendant Kirkness Deposition Exhibit No. 2 for identification.)

[7] BY MR. KIRKNESS:

Q All right, I am handing you Defendant's Exhibit 2 and I ask you, then, if this is the written reply which Mr. Gharrett made to your letter of January 8th, 1960?

A To the best of my memory, it is.

Q In the first paragraph, then, I would refer you to the language: "In response to your request of January 8, 1960, I am sending under separate cover, overlays of charts delineating a baseline along the Alaska coast . . ." Do you recall that you did see such a letter from Mr. Gharrett making that reference which I just quoted?

A Would you repeat that, please?

Q Do you recall that you did see a letter from Mr. Gharrett making the reference to "overlays of charts delineating the baseline along the coast of Alaska" as stated in paragraph one of that letter marked as Defendant's Exhibit 2?

A Well, strictly from memory, I don't think I would remember specifically the wording in the letter from Mr. Gharrett at that time if my memory had not been refreshed. I am assuming that this is the letter we received.

Q Now, you have no reason to believe this is not the letter, do you?

A I have no reason to believe it is not, no.

[8] Q Going back to Deposition Exhibit 1, I would refer you to the first sentence wherein you state, "It has been brought to my attention that you have prepared

charts delineating the extent of the marginal seas for control of the United States nationals." When you referred to the term in that letter, "marginal seas," did you mean the three-mile belt of territorial waters? Is that what you were referring to by the use of that term?

A I believe that is correct. I am not positive of that language, but I believe that is what the reference meant.

Q All right, now, going back to Mr. Gharrett's response to you in Exhibit 2, is it your understanding that his reference in his first paragraph to the baseline along the Alaska coast was the baseline from which to measure the three-mile belt—

MR. BRADLEY: Object. It is a leading question.

BY MR. CRANSTON:

Q I will continue with my question. Was it your understanding that his reference to the baseline along the Alaska coast from which to measure the three-mile limit was in response to what you referred to as the marginal seas?

MR. BRADLEY: Objection.

THE WITNESS: Our understanding of the term "baseline" and of the lines drawn on the overlays was that they were the [9] baselines from which to determine the territorial waters.

Q And then that is to say it was your understanding that it was the baseline from which you would measure the three-mile limit as used in the Alaska fishery regulations?

MR. CHARNEY: Objection.

THE WITNESS: That was our understanding, yes.

BY MR. CRANSTON:

Q Again referring to Exhibit No. 2, Mr. Gharrett in his first paragraph referred to sending under separate cover overlays of charts. Do you recall whether the Alaska Department of Fish and Game did receive overlays of charts?

A Yes, sir, definitely, we did receive a set of charts. I don't recall exactly how many but as I recall they in-

cluded the coastline from Dixon Entrance up through northwest Alaska.

Q Then based on what you have told me at this point, is it fair to say that based on this correspondence and your recollection of it that the Alaska Department of Fish and Game was sent a set of overlays for charts which set out a baseline from which to measure the three-mile limit for fishery regulations?

MR. BRADLEY: Objection.

THE WITNESS: Repeat the question, please.

BY MR. CRANSTON:

[10] Q Then, is it fair to say on the basis of your recollection at this time and on the basis of the exhibits which you have in front of you that the Alaska Department of Fish and Game was sent by Mr. Gharrett a set of overlays for charts which set out a baseline from which to measure the three-mile limit for fishery regulations?

A We definitely received a set of overlay charts which were hand-delivered by someone in the Bureau of Commercial Fisheries. I don't remember by who. It was brought over to our building, as was set out in this correspondence.

Q All right. Based on your understanding of the correspondence, was it your impression that the overlays were intended to describe a baseline from which to measure the three-mile limit for fishery regulations?

MR. BRADLEY: Objection. Leading question.

THE WITNESS: As I say, this was our understanding that these were baselines designed to determine territorial waters.

BY MR. CRANSTON:

Q For fishery regulations?

A For fishery regulations, correct.

MR. CRANSTON: Would you mark as Defendant's Exhibit 3 this large piece of paper with a line on it which has the [11] legend in the lower right-hand corner, "Proposed Baseline from which to Measure Three Mile Limit for Fishery Regulations; Overlay for U. S. Coast

and Geodetic Survey Chart 8502; Cape ST. Elias to Shumagin Islands"; and, further, in the extreme lower right-hand corner there is a numerical indication "4/57," and slightly to the left of that in blue ink, is written lettering "SS, 11/18/71."

I will hand it to counsel for the Federal Government for examination.

(Paper marked Defendant Kirkness' Deposition Exhibit No. 3 for identification.)

BY MR. CRANSTON:

Q Mr. Kirkness, I am going to hand you what has been marked for identification Defendant's Exhibit 3 which is entitled "Proposed Baseline from which to Measure Three Mile Limit for Fishery Regulations; overlay for U. S. Coast and Geodetic Survey Chart 8502; Cape ST. Elias to Shumagin Islands." I want to ask you one first preliminary question. Referring to the lower right-hand corner, would the initials in writing "SDS" have any significance to you?

A That is Stan Swanson's initials.

Q Who is Stan Swanson?

A He has worked for the Department of Fish and Game since about 1953, I think, in various capacities.

[12] Q And you would recognize his initials, is that correct?

A I recognize his initials.

Q Since you have not participated at all stages in the proceedings of this case, I want you to assume two things. First, I want you to assume that this exhibit was located by Stanley Swanson in the files of the Alaska Department of Fish and Game on November 18, 1971. I also want you to assume that a man named H. C. Scutter in an earlier deposition has testified that the lettering "4/57" in the lower right-hand corner of the exhibit refers to the month and year when he drew the line and placed the writing on a similar exhibit. Keeping in mind these assumptions which, for purposes of my question you may accept as being true, and keeping in mind your earlier testimony concerning the letter, you wrote to Mr.

Gharrett and his response to you, I will ask you now, do you have any reason to believe that Defendant's Exhibit 3 is not the overlay which was received by the Alaska Department of Fish and Game as a result of and through the correspondence referred to in Defendant's Exhibits 1 and 2?

A I have no reason not to believe it is one of the charts which was transmitted by the Bureau of Commercial Fisheries.

[13] Q All right. Do you recall having seen the overlays which were transmitted to the Alaska Department of Fish and Game by Mr. Gharrett?

A Yes, I have definitely seen them.

Q Now, referring to Deposition Exhibit 3, can you tell me in any way in which the lettering or the description of what the chart represents is different from that which you recall seeing in the Alaska Department of Fish and Game? By "the description," I refer to the lettering in the lower right-hand corner beginning with the words "proposed baseline."

A Repeat that again, now. Are you referring to this line or the wording?

Q I am referring to the wording down in the lower right-hand corner. Can you tell me that is different in any way from the wording which you recall having seen on the overlays sent by Mr. Gharrett to the Alaska Department of Fish and Game?

A The only way I can answer that is it has been so long ago that I don't recall the wording; that I have no reason to believe it is different than the wording of the charts that were transmitted to us.

Q Do you recall there was wording on the charts which were transmitted to you—on the overlays which were transmitted [14] to you?

A There, again, I would have to rely on memory and to the best of my memory there was wording on the charts.

Q Then is it fair to say that Exhibit 3 which is before you is most probably what you saw in connection with the correspondence described in Exhibits 1 and 2 to this deposition?

MR. BRADLEY: Objection. Leading question.

THE WITNESS: Would you repeat that question, please?

BY MR. CRANSTON:

Q Is it fair to say that Exhibit 3 is probably what you saw in connection with the correspondence which we have previously discussed as Exhibits 1 and 2 to this deposition?

A I would say yes, it probably is.

Q Were you ever aware that more than one set of charts has been sent to the Alaska Department of Fish and Game by the United States Government in response to this correspondence?

MR. BRADLEY: Objection.

THE WITNESS: Would you repeat that question?

BY MR. CRANSTON:

Q Was more than one complete set of overlays sent to the Alaska Department of Fish and Game by Mr. Gharrett pursuant to this correspondence?

A I don't recall.

[15] Q But do you know of any more than one set of charts that was sent, one set of overlays to charts which were sent?

A To the best of my memory I believe we only received one set.

Q All right. If I were to ask you, did you ever see anything which would indicate a second set of charts having been sent, what would your answer be?

A Repeat that question, please.

Q Do you recall ever having seen anything which would indicate to you that a second set of overlays to charts was sent by Mr. Gharrett to the Alaska Department of Fish and Game?

A I don't recall any other sets being transmitted.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. BRADLEY:

Q Mr. Kirkness, would you read for the purposes of this deposition the last three paragraphs that have been submitted as Deposition Exhibit No. 2? Read it aloud into the record.

A "This information was submitted to Canada upon their request for information concerning Section 130.10 of our regulations, and was submitted with the explanation that this was [16] the manner in which the regulations applied to U. S. fishermen. We definitely avoided any reference to International or Territorial waters.

"I might add that we have not had occasion to make any arrests for violations of these regulations.

"If you have any further questions on this matter, I will be pleased to discuss them with you."

* * * *

[5] HOLGER S. LARSEN, a witness named in the Notice, being first duly sworn in the above cause, testified on his oath as follows:

EXAMINATION

BY MR. CRANSTON:

* * * *

[24] Q Now, taking that area from Cape Douglas to Gore Point, over what areas did you—over what of the water area north of that line did you look for violations of Federal laws and regulations?

A Of what area?

[25] Q Yes. What was the water area over which you considered you should have looked for violations of Federal laws and regulations?

A Over the entire district.

Q I see.

By the "entire district" you mean the entire water area of Cook Inlet?

A The entire water area of Cook Inlet, yes.

Q I see.

Would you have looked for violations of Federal law and regulations in the water area, say, even up the middle of Cook Inlet, north of that line?

A You are talking about this area here now?

Q Clear down an area between Cape Douglas and Gore Point.

A Well, I am not so sure I understand the question correctly.

Could you clarify it a little more when you speak of an area in here? What have you reference to when you talk about law enforcement?

Q Well, I take it that it was your duty to ascertain whether, among other things, of course, the fisheries' laws and regulations of the United States were being complied with; is that correct?

A That's right.

Q Now, over what water area north of the line from Cape Douglas to Gore Point would you require persons to comply with the fisheries' laws and regulations of the [26] United States, or within what water area? The entire area north of that line?

MR. CHARNEY: Objection, a leading question.

Q [By Mr. Cranston] All right, you just told me yourself over what water area.

A Well, I don't—I am not sure I understand just what your question is.

Let me put it this way: Can I put it in my own language, and I will say this—that within the Cook Inlet District, assuming that we had a regulation stating that a a gill net boat would have 200 fathoms of net. And we found a boat out here, an American boat out here.

Q What are you pointing to now?

A Anywhere within the Cook Inlet District.

If we had found a boat with 300 fathoms of net, we would have arrested him.

Q Now, let's specifically get at what particular laws were relevant to your activities.

Generally, I suppose one of the fisheries with which you were concerned was the salmon fisheries; is that correct?

A That is right.

MR. CRANSTON: Off the record.

(Discussion held off the record.)

MR. CRANSTON: Back on the record.

THE WITNESS: I can repeat it again.

I said that in flying over the Cook Inlet area, it could be a boat—there were specific fisheries' [27] regulations pertaining to each district, and I used this as an illustration, that if any of our fisheries' laws or regulations provided for 200 fathoms of net to be used within the Cook Inlet District, and I had found an American boat out here with 300 fathoms of net, I would have arrested him.

Q All right.

A Anywheres in the Inlet, within that Cook Inlet, Fisheries' District.

* * * *

[33] Q Did you make any arrests in an area south of Kalgin Island that stand out in your memory other than those which you have just described?

[34] A No, I don't.

Q Those are the ones that—

A That I was personally involved with most of the time. The fishery agents—Branson, Cross, Reynoldson—took care of these areas' incidents.

It was very seldom I got personally involved with something like this.

Q Did any of those other fishery agents make any arrests in the area south of Kalgin Island?

A I'm sure they did.

I can't tell you so many, but I'm sure they did.

Q Nothing sticks out in your mind, then; is that correct?

A That is right.

Q Now, so far as you can remember, within the period 1945 through 1958, when you were in the Cook Inlet area, were there any foreign fishing activities carried out within the area designated on Deposition Exhibit 1 as Cook Inlet?

A Well, from time to time the Canadian halibut fishing boats would be found in that area.

Q All right.

You are talking about the area generally north of the line from Cape Douglas to Gore Point?

A Yes.

Q All right.

It was an incident involving a Canadian halibut boat —let me rephrase that question.

[35] Does any particular incident involving a Canadian halibut boat in Cook Inlet come to you or—

A No.

Q —or stand out above any other?

A No.

Q Did you ever personally observe any Canadian halibut boat in Cook Inlet?

A I have seen them from time to time, but paid no attention to them, because we considered that international waters.

In other words, I was not involved in any Canadian fishing boat being inside or—what we considered the 3-mile limit.

If he had been inside of the 3-mile limit, some action would have been taken, and I would have remembered them, but any halibut fishing boat out here, they just come and I would pay no attention to them.

* * * *

[2] COURT MARCHANT, being first sworn upon oath, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Marchant, will you state your name, please?

A Courtland Marchant.

Q And what is your address?

A 3100 Brookside Drive, Anchorage, Alaska.

Q And what is your age?

A Forty-seven.

Q And what is your occupation?

A I am the Owner Relations Manager for Alaska Sales & Service, which is a dealership for General Motors.

Q And how long have you been employed in this capacity?

A A little over nineteen years.

Q Now, is there any time in your employment career when you have engaged as a commercial fisherman?

A Yes. In the year 1951.

Q All right. And were you employed by someone then?

A I was employed by San Juan Fishing Company.

Q I see. And how long did you pursue this occupation as a commercial fisherman?

A Approximately three months in the summer of '51.

Q All right. And were you assigned to a particular vessel?

[3] A I was assigned to the S.J. Nine which is one of the company's boats.

Q All right. And what type boat was that?

A That was about a thirty-two—thirty-four foot fishing boat that we seined and gillnetted from.

Q What type of fish were you attempting to catch?

A Salmon, red salmon, cohoe, the general salmon that run in the area of Copper Center, Cook Inlet and Kodiak.

Q All right. And during this period of time where were the areas you fished?

A We originally started out in Copper Center which is out of Cordova. And when the season was over there, we returned to Kodiak which is the home base and there we turned over from gillnet to seining and seined the the areas about Kodiak. And when this season was over, we returned and went back to gillnetting and then hit the Inlet area. That was the last phase.

Q By the Inlet, what do you refer to?

A Oh, anything around in Kenai, Snug Harbor—

Q You're talking about Cook Inlet, is that right?

A That's right. Around the mouth.

Q Now, what time of year or what month then were you fishing in Cook Inlet?

A Well, to say the exact days, it's kind of hard to reminisce on that, but—

[4] Q Approximately?

A It had to be during the open season fishing, which we fished the full season. I have to go back twenty years on that. That is kind of hard to say.

Q Would it have been somewhere around July? The middle of July?

A It is in the July area.

Q All right. Now, while you were fishing in Cook Inlet did you ever have any type of encounter with the agents or employees of the Federal Government?

A Yes. There was one instance there where we were approached by a launch from the U.S.S. Crane and given a citation for fishing too close together with another vessel.

Q All right. What, incidentally, was the U.S.S. Crane? What type of vessel was it?

A It was a very large vessel. It was a U.S. vessel, very large in comparison to our boat, and from it they had launches going out and investigating all the boats and approaching them. In this case we just had a launch with a couple men that come up. It was too rough to board, so they handed us a citation—gave a citation to the skipper for fishing too close. But, this vessel was very large. That's all I can remember about it.

Q By U.S., you mean an agency of the United States?

A Yes.

[5] Q What agency?

A Well, evidently with Fish and Wildlife.

Q All right. Would you mark this, please, as Deposition Exhibit 1. I am going to hand you to be marked for identification as Deposition Exhibit 1 a U.S. Department of Commerce, Coast and Geodetic Survey chart No. 8502, 16th Edition, dated July 4th, 1970, corrected through Notice to Mariners 27/70. Mr. Marchant, I am going to hand you what's been marked as Deposition Exhibit 1 and ask you, first of all, this area depicted on Deposition Exhibit 1, if it includes areas in which you fished during the year 1951?

A This general area here is where we fished.

Q Now, when you're pointing to the map, just describe it. You're pointing to Cook Inlet south of Kalgin Island?

A Right. South of Kalgin Island.

Q All right. Now, one further question, would you indicate by placing a mark on the Inlet—a circle with this black pen the location, as best you can remember, of where the agent from the U.S.S. Crane handed you the citation?

A To the best of my knowledge it would be in this area right in the center.

Q All right. You marked with your circle—with this pen a black circle on Exhibit 1 between the letters "L" and "E" in the words Cook Inlet, and between the numbers 27 and [6] 37, is that correct?

A That is correct.

Q Did the man who handed you the citation identify himself in any way?

A As I recall he did. He handed the citation to the skipper of the boat and I—I can't recall exactly what he said, but I know he yelled and spoke to us. And he couldn't board, so he just handed it over.

Q All right. What was done then after you were handed the citation? What did you—were you directed to go anywhere or do anything?

A Right. We were requested to report to the Magistrate in Kenai, Alaska.

Q All right. And who directed you to do this?

A This was the man that handed us the citation.

Q All right. Now, by the Magistrate, what was he? A governmental official?

A Right.

Q Of what government?

A I'd say he was the United States Government.

Q All right. Now, you did then report to the Magistrate in Kenai?

A Yes. We had to go over there by boat, and at that same time there were a whole group of fishermen there. Numerous ones were cited and there was a whole group of us there.

[7] Q All right. How soon after you were handed the citation aboard your vessel did you report to the Magistrate?

A I can't say exactly. It was very shortly afterwards that we had to report.

Q Was it the same day or the next day, or can you recall?

A I would say it was the following day.

Q All right. And were you informed by the Magistrate at any time subsequent to the handing over of the citation what you were charged with?

A Well, we knew we were charged for fishing too close because of the circumstances. This was the citation that was given to us.

Q All right. And could you describe generally what the circumstances were? In other words, what had you done—engaged in to cause you to become fishing too close? Generally what was the specific incident that took place?

A Well, the problem that we encountered was that in gillnetting you lay out crosswise or along with the current and in this case we had laid out and we were a long distance from any boat and we had all more or less figured that we were in a safe area, not being close to another boat. But, unbeknownst to us, another boat laid out down below us and in this certain area of the Inlet we had a current going one way and one going inward and we were going outward, I would say. And the other one was coming in, or vice versa. [8] But, at any rate, over a period of time, the next thing we knew, we were coming in contact with another boat and the ends of our nets met and started curling up and coming into contact together, which in reality is a violation because you are supposed to be so many fathoms apart. It was uncontrollable. There was no way we could stop it.

Q I see. Then you'd describe the cause of the occurrence as something that was out of your control?

A I would say so. Yes.

Q All right. Now, when you reported to the Magistrate in Kenai what proceedings took place and generally what was the result of those proceedings?

A Well, there were three of us on the boat and we all three had to report in. And we arrived at the

court and, of course, there was a lot of other fishermen there also because there was a great amount of fishermen that had been apprehended, you might say. And we went in the court there. The building wouldn't hold everybody, so they were staggered inside and outside. And to the best of my recollection, the skipper of that boat, Mr. Egger, was spokesman for our boat and our group. And he went in there and it was quite some time before he come out a little later, and we were excused because of the circumstances when it was explained to the Magistrate.

MR. CHARNEY: Objection. Hearsay.

[9] MR. CRANSTON: All right. You may continue however.

A And he come out and we come to find out that we were excused from the citation. And at that time I had business in Anchorage and I flew from Kenai to Anchorage and then eventually flew back to the boat.

Q Are you saying then that the citation—the charges against you were dismissed?

A They were dismissed.

Q Once it was explained to the Magistrate, much as you've done here, why it—

A Right.

MR. CHARNEY: Objection.

MR. CRANSTON: Why the thing took place?

A It was dismissed with the fact that they had no reason to hold us, because it was a thing that happened that couldn't be controlled.

Q All right.

MR. CHARNEY: I assume my objection applied to that answer also.

MR. CRANSTON: Do you recall the date that this took place?

A No. I'd have to refresh my memory by the newspaper, which I've had no prompting or anything on this so far as the exact date. It would have to be—I'd go by the newspaper which had a headline on it of, "A Hundred and One Fishermen [10] Apprehended on the Inlet."

Q All right. I am going to have to get an exhibit. Let's go off the record.

(Whereupon an off-the-record discussion was then had.)

MR. CRANSTON: Back on the record. I am handing you for identification as Deposition Exhibit 2 a page from the Anchorage Daily Times dated Wednesday, July 18, 1951, with the headline, "101 Fishermen Nabbed." Mr. Marchant, I am going to hand you for identification as Deposition Exhibit 2 a page from the Anchorage Daily Times dated Wednesday, July 18, 1951, with a headline "101 Fishermen Nabbed" and ask you if this is the newspaper article you referred to when you mentioned a newspaper article in your earlier testimony?

A Yes. This would be it. This would be it about the one hundred and one fishermen.

Q Were you among those one hundred and one fishermen who are referred to in that article?

A I was.

Q All right. With respect to Deposition Exhibits 1 and 2, I would move their entry into this record as part of this deposition.

* * * *

[11] MR. CRANSTON: All right. Going to another subject briefly, Mr. Marchant, while you were in Cook Inlet fishing did you ever observe any foreign fishing vessels?

A No. Not to my recollection.

Q All right.

A I am going to ask you this one question, what do you mean "foreign"? You don't mean out of state?

Q No. I am referring to those of a foreign country. Different country.

A No.

Q And you fished generally between what areas in Cook Inlet?

A Well, we fished a good portion of the time in the center section of the Inlet.

Q Near the place you were arrested?

A Right in that area. This is where the majority of the fleet fished. Below Kalgin Island. More to the center of the Inlet than anyplace else.

Q And that is generally where you confined your fishing activities?

A That's right.

* * * *

[12] CROSS EXAMINATION

BY MR. CHARNEY:

* * * *

[13] Q This San Juan Fishing Corporation, where was it located?

A On the island of Kodiak in one of the—well, the head company is located in Seattle, but their cannery and everything is on one of the islands of the Kodiak group.

Q They have a plant and all sorts of things?

A It is where they store the boats. They have a cannery, they have living quarters, they have places to work over there. Net repairs, boat repairs. In fact, the whole fleet works out of there. In the wintertime they put the boats up, repair them and put them up and they are raised up out of the water and stored until the next season.

Q Are you a citizen of the United States?

A Yes, I am.

Q Have you always been?

A Always have been.

* * * *

[24] Q Was the citation handed to you?

A No, it wasn't.

Q Did it have your name on it?

A No.

[25] Q Did it say what you'd done that was illegal?

A Yes. To the best of my recollection. I think I mentioned this earlier. That we were cited for fishing too close to another fishing vessel.

Q Do you recall seeing that on the citation?

A I saw the citation, but I can't truthfully say that I recall seeing it. Not in my mind right at this moment.

Q Might it be that somebody told you? Like the skipper of the ship told you that?

A Yes and no. It's probable, but I'm sure I probably looked at it.

Q Who was the Magistrate in Kenai?

A I do not recall his name for the period of time that's elapsed.

Q Glenn Egger was given a citation at the same time?

A We were given a citation as a boat. As a group.

Q Who was Glenn Egger?

A He was the one that was in charge of the boat.

Q Now, let's discuss what happened when you went to Kenai. Where did you go to?

A The Magistrate's office.

Q And did you yourself appear before the Magistrate?

A No. As I stated earlier, we had to all approach as a group and beings there was so many of us, as I recall, the skipper of each boat went in to see the Magistrate [26] independently. And I believe at that time they had more than just one boat in at a time. Now, whether it was for fishing too close or illegal fishing, whatever it was. I can't recall on that point.

Q But, there was this whole group of people all given some kind of a citation?

A Right.

Q And so you didn't appear physically before the Magistrate?

A No, I didn't.

Q Egger did?

A Yes.

Q And did the Magistrate tell you why you were not—why you were being released?

A No. The first notification I had was from Mr. Egger when he come out of the room and says they'd been—we'd been excused from fishing too close because of the circumstances. That was my first—

Q That is your recollection?

A That is my recollection on that.
Q Now, he told you that?
A Yes.
Q Do you have any other—do you know whether the Magistrate issued an opinion? You know, a written opinion or oral opinion saying the reasons for the release?
A No, I don't.
[27] Q So, this was Mr. Egger telling you that you'd been released and giving you the reason that because of the circumstances you were released?
A Right. I knew we were released because there was no fine or we weren't held up or the boat wasn't attached or anything like that.
Q There was no other notification to you about this decision?
A No. Other than the fact that we were free to continue fishing again.
Q Did you fish out in the same area again?
A Yes.

* * * *

[3] GEORGE A. MOSHER, a Material Witness called for examination by Defendant, having been first duly sworn by the Notary, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A George A. Mosher.
Q And what is your address?
A Route 1, Box 89, Long Beach, Washington.
Q And what is your age?
A Thirty-nine.
Q And what is your occupation?
A Commercial fisherman.
Q Is that—are you presently employed by someone, or—
A No; I have my own boat.
Q You have your own boat. Where do you presently engage in that occupation?

A Columbia River and Willipa Bay.
Q Willipa Bay is off the coast of Washington?
A Yeah.
Q Have you ever engaged in the occupation of a commercial fisherman in Alaska?
A Yeah.
Q And when was this?
[4] A Well, 1950. I'm not sure of the other years, it could have been one year before or one year later.
Q In other words you say that you fished up there for three years?
A Yes.
Q And would it have been approximately, you think, from 1950 or '49 through '51, or—
A Yes.
Q Who did you fish for when you were up there?
A You mean the company, or—
Q Right.
A San Juan Fishing Company.
Q Where in Alaska did you fish?
A Well, we fished Cordova, and then we'd go back to Cook Inlet, and then we'd go back to Kodiak Island.
Q And what determined the area you fished in at any particular time?
A Well, the seasons. Cordova was a little bit earlier than Cook Inlet, and then we'd go to the inlet and fish, and then when we got through at the inlet we'd go back to Kodiak and go seining.
Q Do you recall generally the time in the fishing season when you'd be in Cook Inlet, say the month?
A Well, it would have had to have been in June.
Q I see. And what type of fishing did you do in Cook
[5] Inlet?
A Gill net.
Q And could you describe, generally, what you mean by "gill net;" in other words, where is it done and how is it done?
A Well, you have approximately 1200 feet of gill net which you lay out in the inlet where you see the fish jumping and just let it drift with the tide.

Q And this type of fishing, where is it done, generally, with respect to the shore in Cook Inlet?

A Well, it could be any place, wherever you see the fish jumping; it could be in the middle, or closer to shore, one way or the other.

Q By that you mean that, for instance, you were not limited to the shore?

A No.

Q All right. Would you fish—where in the inlet can you carry on your gill net fishery, what portions of it?

A Well, around Kalgin Island, I would say about halfway between Kalgin Island and the Kenai Peninsula.

Q And did you ever go south of Kalgin Island?

A Yeah, I suppose we did; yeah.

Q While engaged in the fishing activity in Cook Inlet were you ever on a boat or were you ever, yourself, apprehended, arrested or stopped by anyone?

[6] A Yes.

Q And would you give the details of this?

A Well, they had a law that the nets couldn't be within 600—had to be 600 feet apart from the other gill netters. So they have crazy tides up there and sometimes the nets get closer than that, so they had the law then that—well, they had the law, and so they picked us all up this one day.

Q By "they", who do you mean?

A Well, a couple guys from the skiff.

Q And who were they, who did they represent?

A I don't know—government, I suppose. I don't actually know who they were.

Q By the "government", what do you mean?

A The Fish Commissioner, as far as I'm concerned.

Q Of the United States?

A Well, yeah, I imagine.

Q Okay. And what were you told to do?

A Well, trying to obey the law we were picking up the nets as fast as we could; and then we had to all go to Kenai and go to court.

Q And did you go to court?

A Yeah—I didn't actually go to court; just the skippers had to go.

Q And what did you do?

A Well, I guess I probably just messed around the courtroom. [7] I was outside, you know, while they were in there.

Q And what was the outcome of the proceeding?

A Well, they figured the law was not enforceable, so they just threw it out of court.

Q Do you know where this took place? About where were you in the inlet when you were boarded?

A Oh, I'd say about five miles—well, down from Kalgin Island, probably about five, six miles out from it towards Kenai. We always fished about—around in that area.

Q Were you within three miles of any shore at this point?

A I don't think so.

MR. CRANSTON: I have no further questions.

CROSS-EXAMINATION

BY MR. CHARNEY:

Q How deep was the gill net you used?

A How deep—I'm not sure.

Q Well, can you give a range, you know? Was it a thousand feet deep or was it—

A Oh, no.

Q —or was it thirty feet deep?

A I'd say between forty and fifty feet deep.

Q What boat were you on?

A It was the S. J. 11—yeah, S. J. 11.

Q What does "S. J." stand for?

[8] A San Juan Packing Company.

Q Where was that boat kept?

A Uganik Bay, Kodiak Island.

Q Could you spell that, please?

A U-g-a-n-i-k.

Q And why was it kept there?

A That's where they kept all their boats in the wintertime—or, all the time.

Q Was this company located on Kodiak Island, then?

A Yeah.
Q Did they have any plants there or—
A Yes, they had a cannery there.
Q Are you an American citizen?
A Yes.
Q Were you when you were on that boat?
A Yes.
Q How about—were you the captain of that boat?
A No.
Q Who was?
A Harry Wilson.
Q Do you know if he was an American?
A Yes, he was.
Q Did that boat fly any flag?
A No.
Q How big was it?
[9] A Thirty-six feet.
Q How big a crew?
A I think we had two men and sometimes three: two in the inlet and three when we were seining.
Q Did you ever pay a fine on that incident you've—
A No, there was no fine; they threw it out of court.
Q How do you know what the commissioner did?
A Well, I was there, but not in the court.
Q Did the commissioner say anything to you?
A No.
Q How did you know it was thrown out of court?
A The skipper told me.

* * * *

[12] REDIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

Q Do you recall the date that this incident which you've told us about today took place?
A No, I don't.
Q Would it have been the same date that Cort Marchant and Glenn Eager were involved in a similar situation?

A Same date.

* * * *

[2] RONALD C. NAAB,

called as a witness by the defendant, having been duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A My name is Ronald C. Naab.
Q What is your present address, Mr. Naab?
A I live in Auke Bay.
Q Where is your present business address?
A I am with the National Marine Fisheries Service, United States Department of Commerce, in Juneau.
Q What is the particular position you hold with the National Marine Fisheries Service?
A I am the Fisheries Management Supervisor with the Division of Enforcement and Surveillance.
Q Over what areas do you presently have supervision?
A Over all the National Marine Fisheries Enforcement and Surveillance Program in the entire Alaska Region.
Q What area does the entire Alaska Region encompass?
A The same area as the State of Alaska.
Q Would you just give some background as to the type training that you have had, say, your education and post education [3] training for this position or any other position you have held.
A I have a Bachelor of Science degree in Fish and Game Management from Oregon State University. Following college I was in the military for two years. Following that I was a fishery biologist with the Oregon Fish Commission in Astoria, Oregon, working on salmon.

In 1957 I joined what was then the Fish and Wildlife Service as a fisheries management biologist, stationed in Cook Inlet, and was employed there from about May of '57 to September of '59. At that time I was transferred to Galveston, Texas, as a fishery research biologist, still with the Fish and Wildlife Service.

In about January of '61 I returned to Alaska, employed as an Assistant Area Fishery Administrator, again stationed in Cook Inlet, and in about September of '61 I transferred to Juneau in my present position.

• • • •

[10] Q In respect to what you did in the Cook Inlet District, would you describe generally what your duties and responsibilities were?

A We were responsible for establishing the fishing periods that would be allowed for commercial fishing, establishing the types of legal gear, establishing the districts in [11] which certain types of fishing would be permitted. We were also responsible for determining the escapement of salmon to the various spawning streams in Cook Inlet, some stream enhancement in such forms as removal of barriers to spawning grounds, and then also enforcement of the commercial fishing regulations in Cook Inlet District.

Q This you would say was your primary responsibility in that office?

A Yes.

• • • •

[25] Q When you were in the District Office in Anchorage, the Cook Inlet District, were you yourself well acquainted with the fishery laws and regulations of the United States as they affected Alaska?

A Yes, and particularly as they affected Cook Inlet.

Q Again, the only laws or regulations, directives, and so on of which you are aware which defined the Cook Inlet District are those regulations to which you referred earlier?

A Yes.

Q Were those the regulations that were promulgated under the Act known as the White Act?

A I believe they were.

Q That's that 1925 Act relating to the fisheries of Alaska?

[26] A I believe so.

Q Those, again, so far as you are able to remember or recall are the only written documents or what have you which would define the Cook Inlet area as you were stationed there?

A They are the only ones I am famiilar with, yes.

Q When you enforced or were carrying out your activities in the Cook Inlet area did you make any distinctions in your duties relative to the particular water areas of Cook Inlet over which you exercised any control or enforcement activities?

A We made distinctions as to within what area, what legal fishing time and legal fishing gear was permitted, yes.

Q What about territorial areas? In other words, what areas of Cook Inlet did you patrol?

A Essentially, with a few exceptions of the outer regions, we patroled all the areas defined by the regulations.

Q I see.

A It was not limited to any particular distance offshore.

Q You would patrol irrespective of the distance you were from shore; is that what you mean?

A If there was a likelihood that somebody was doing something that was contrary to the regulations in that area, yes.

Q Do you know offhand, is there any chart, map, document, letter, anything which can be characterized as a written representation of the limits of what we would call the [27] territorial sea in Alaska?

• • • •

[32] MR. CRANSTON: Can you mark this as Deposition Exhibit "2"? (Whereupon C. & G. S. 8502 chart of Cape St. Elias to Shumagin Island, 16th Ed., July 4, 1970, was duly marked as Deposition Exhibit "2" by the reporter.)

(Off the Record)

Q I'm going to hand you what has been marked as Deposition Exhibit "2", which is Chart 8502 of the U.S.G.S., dated July 4/70, N.M. 27/70, Price $1.50. I ask you, do you recognize that general area depicted on that chart?

A Yes, I do.

Q And the general area depicted on that chart, even though not precisely the same insofar as Cook Inlet is concerned, is the area for which you were responsible as the—what was your position again in 1957 through '59?

A Fishery Management Biologist.

Q That area of Cook Inlet is the area for which you were responsible?

A The area on the chart that I'm looking at encompasses the area for which I was responsible.

Q You have stated earlier that your primary responsibility was to see that the Federal Fish and Game laws and [33] regulations were enforced in the Cook Inlet area in those years; is that correct?

A Yes.

Q And you did testify that generally in regard to patroling the area in aid of your enforcement you used patrol boats and patrol aircraft?

A Yes.

Q And I guess you also testified you used other vehicles. What other vehicles would those have been?

A Cars, trucks, panel wagons, mainly. Where there was a road system we used mostly vehicles.

Q But so far as the water areas were concerned I guess of necessity you were limited to aircraft and patrol vessels?

A Yes, and occasionally small outboard skiffs in areas where the stream guards had such a boat.

Q Did you at that time, in regard to this enforcement responsibility, feel that your enforcement capabilities were adequate or not?

A No. I don't think anybody charged with policing such a big area as this or other areas, any enforcement personnel generally feels he has adequate equipment to really cover his responsibility.

Q Did you ever communicate to anyone, either below you or under you, in writing your feelings along this regard?

A I cannot remember communicating this in writing to my [34] supervisor. He was aware verbally of my feelings on this.

Q You communicated your feelings on this to Mr. Skerry?

A To Mr. Skerry, Yes.

Q And so far as you can best remember nothing was communicated in writing on this subject or related to it?

A Not from me.

Q From anyone else?

A I'm not sure if Mr. Skerry relayed our concern to the Regional Office here in Juneau in writing or perhaps verbally. I know they were aware, the people in Juneau were aware, that we felt we needed additional equipment and people and money.

Q In respect to the patrol boats or vessels which were used in Cook Inlet during the time of your responsibility there, do you know the names of any of the vessels used?

A Yes. We had permanently assigned to Cook Inlet for at least, as I recall, two years a boat called the "Grayling", which was generally based at Seldovia, although she was used throughout the inlet. At least one summer we had a vessel from the Vessels Division here in Juneau called the "Widgeon", I believe was the one we had. That's the only two I recall being in the inlet during my period there.

[35] Q Do you remember who the officers in charge of these vessels were or are?

A The "Grayling" was run by C. Ralph Magee. The "Widgeon"—the year that I remember her being there was run by Louie McDonald I believe.

Q Do you know where any of these individuals may be?

A The last I had heard (this was several years ago) Mr. Magee had, I presume, retired. He was no longer employed by us at least and he had left Seldovia and was going to live in Florida. I have no idea where in Florida.

Louis McDonald was in Juneau for a period of time. I'm not sure if he's here currently or not.

Q Do you know the names of any of the crew members on these vessels?

A This Chuck Wilson who I said eventually came to work as an assistant to us was at least one year the second crew member on the "Grayling", which is all she ever carried. I don't remember any on the "Widgeon".

Q Do you know where Mr. Wilson might be?

A Again, Mr. Wilson the last I heard was in the Spokane, Washington, area.

Q So in regard to the patrol vessels during your period of responsibility, you can recall the names of two vessels and the names of three individuals who were aboard those vessels?

A Yes.

[36] Q During any other periods of time with which you are familiar, even though you may not have been directly responsible for the area, were there any other vessels or any other names of individuals whom you might be able to recall?

A At sometime in the '50's, possibly '55 or '56, a man named Fred Headlee ran a patrol boat up in Cook Inlet. Right at the moment I can't recall the name of the patrol boat but it may well have been the "Grayling", but I know he did run a patrol boat in the inlet.

Q Was he employed by the Fish and Wildlife Service?

A Yes, he was; by our agency.

Q Was there a vessel called the "Teal" in Cook Inlet during any of these years?

A There could have been; yes.

Q You have no direct information relative to the "Teal" or recollection of it?

A I don't believe the "Teal" was in the inlet during the time I was in the inlet. I'm fairly confident of seeing something that she has worked in the inlet but I can't recall if she was there when I was there or not.

Q By reference to any land marks on Deposition Exhibit "2" that you would like to refer, could you indicate within what areas on Cook Inlet your agency's vessels patroled while you were responsible for that district?

I'll even make it a little more definite. What were the southernmost [37] limits patroled by your agency's vessels while you were stationed in the district?

A The farthest south I know that any of them operated was down here in the Port Dick-Port Chatham area in the southern Kenai Peninsula.

Q Would you describe, perhaps, the southern boundary then as being the vicinity of Point Gore?

A Yes, I'm sure they were down in the Point Gore area.

Q And thence westward from Point Gore, or the two areas which you named, where did they patrol?

A The vessels generally worked, as I said, from the area I indicated along the shore of Kenai Peninsula up through Kachemak Bay and along the shore, and once we passed the latitude of Anchor Point they operated all through the central inlet, if we can call it that. I believe it was occasionally, once or twice, when we had a ship working along the west side but due to weather this was generally not a highly patroled area by vessel.

Q When you say once they got beyond the latitude of Anchor Point they patroled, you say, throughout the inlet—What do you mean?

A Throughout the middle inlet. We had a drift gill net fishery operating from roughly the latitude of Anchor Point to about a line between east and west foreland. This was an area where they had gill net fishing.

[38] Q Was there any drift gill net fishing in the inlet south of Kachemak Bay and west of Kachemak Bay, say between Kachemak Bay and Cape Douglas and Barren Island?

A No, not to my knowledge.

Q Was there any type of fishery in that area?

A Yes.

Q What was the fishery in that area?

A Shrimp fishery and crab fishery; shrimp I should say in Kachemak Bay; the crab fishery, primarily king crab, in Kachemak Bay; some of the other bays along the outer Kenai Peninsula and in Kamishak Bay on the west

side of Cook Inlet; salmon fisheries along the entire shoreline of both the west side of Cook Inlet and the east side of Cook Inlet.

Q Was there any fishery in the area of Cook Inlet out from the shore south of Anchor Inlet?

A No, not that I have ever observed.

Q Are you aware of any circumstances when patrol vessels did patrol the waters out from the shore in any area south of Anchor Point?

A No, and I think had they been operating in the offshore waters in lower Cook Inlet it probably would have been merely in transit from one patrol area to another one.

Q Was there any halibut fishery down in that area?

A There is some halibut fishing in this area, yes, to my [39] knowledge particularly along the Kenai Peninsula, Kachemak Bay, out to Port Dick at least.

Q Was it your responsibility when you were in the Cook Inlet District to enforce whatever laws, regulations and treaties that applied to the halibut fishery?

A Yes.

Q Do you recall that on January 7 of this year you had a conversation with an individual from the State of Alaska named Dale Cheek?

A Yes.

Q Did you discuss with Mr. Cheek the area of Cook Inlet which was patroled by vessels while you were serving in the Cook Inlet District?

A I may well have, yes. I don't recall specifically that frame of reference.

Q But putting it in whatever frame of reference you would like, what generally did you discuss with him concerning the patrol activities of your agency in Cook Inlet while you were in the district?

A I'm sorry, I don't understand the question.

Q Generally what did you discuss with Mr. Cheek at the time of this discussion?

A Well, as I recall, we discussed the fact that I had worked in Cook Inlet, that I had patroled the fisheries in this particular area, and we discussed the type of fishing that was [40] conducted, the general areas within the area

where the fishery was conducted, and as I recall, some of the methods of patrol that we used in the areas that we covered. Do you recall specifically that you referred to a map of Cook Inlet, or a map of Alaska which included Cook Inlet, and you told Mr. Cheek while indicating an area between Point Gore, the Barren Island and Cape Douglas that vessels under your control or direction, or your agency's control or direction, patroled all of that area?

A I may have told Mr. Cheek that we were responsible for patroling all of that area but I do not remember saying that when I was in Cook Inlet that we had vessel patrols in that particular area.

Q But you did tell him you were responsible for patroling the area between Point Gore and Barren Islands and Cape Douglas?

A Yes, because this is part of our district boundaries.

Q In other words, it was your impression at the time and you interpreted the duties of your office at that time that all of that area was under your responsibility insofar as patrol activities were concerned?

A Yes. As I indicated, we patroled lower Kenai Peninsula; we patroled the west side of Kamishak Bay down as far as Cape Douglas. I was personally on a number of patrols that were down that far.

Q And you also interpreted at that time that had the necessity [41] arisen it was your responsibility to patrol the water areas between Point Gore and Cape Douglas?

A Had the necessity arose, yes.

Q When I started this line of questioning I was referring mainly to patrol vessels. I think I started out in that regard. How would you describe the activities of patrol aircraft at the time you were in Cook Inlet? Would they be any different from the activities of patrol vessels?

A Yes.

Q Would you describe their activities?

A I'm not sure what you mean by activities. The aircraft was our principal form of patrol craft that we relied upon simply because of the distances involved, and the aircraft was used for patrol primarily along the

entire shoreline of the entire Cook Inlet District, for patrol, provisioning of our stream guards, and in some cases stream surveys, all types of work.

Q Was the aircraft also used for patrol of the water areas in Cook Inlet?

A As needed, yes.

Q Could you describe within what boundaries the patrol aircraft patroled on Cook Inlet?

A The area of primary patrol probably was along the shorelines of Kenai Peninsula and the west side of the inlet. The area of primary patrol at some distance from shore was [42] mainly between the area east and west forelands in the latitude of Anchor Point.

Q And in regard to the other areas of Cook Inlet, say north of a line from Point Gore, Barren Island to Cape Douglas, did you consider at that time that all areas north of that line were within your area of patrol responsibility insofar as aircraft patrols?

A They were in our area of responsibility for aircraft or vessels, of course. There was little, if any, active patrol in this area. The area was transit, it going to and from the east and west side.

MR. CHARNEY: Could I ask, has he specified this area?

A This area, I mean the area at some distance from shore south of the latitude of Anchor Point.

Q Would you characterize the reason for lack of patrol activity in that area because of a lack of intensive fishing in that area?

A Yes, a lack of any fishing in that area.

Q And that you would characterize as the sole and primary reason for lack of patrol in that area, that is, south of the latitude of Anchor Point?

A Yes.

Q Generally when we're talking about the fishing laws and regulations which you were charged for enforcement of, will you characterize those as you were looking to see [43] if there were any violations of the regulations which prohibited purse seining in Cook Inlet? First of all, was there such a regulation which prohibited the use of purse seines in Cook Inlet?

A Yes.

Q This is one of the things you were looking for; is this correct?

A Yes.

Q What, generally, were your requirements as to the use of drift nets in Cook Inlet?

A They were allowed to fish with a certain length of net, with certain mesh sizes, during certain periods, and in certain areas.

Q Were there any laws and regulations relative to the spacing between drift nets?

A Yes.

Q Generally, what were those?

A I forget the precise distance, but there were some regulations to forestall creating an impenetrable barrier of nets across any particular area. There was a requirement saying that drift gill nets could be no less than so many feet or so many yards apart. I've forgotten precisely

* * * *

[46] Q Were any personnel under your authority or under the direction of your agency charged or vested with the authority [47] to make arrests for violation of fish and game regulations or laws? In other words, what arresting authority did you or anybody of whom you may be aware have?

A We had authority to arrest anybody violating the Federal regulations concerning commercial fisheries.

Q Specifically did this apply to you and all personnel supervised by you?

A Generally. At times we had personnel working with us or for us that were primarily conducting research programs of some sort. Each employee was issued an appointment paper and on that appointment paper it indicated whether he did or did not have enforcement authority. There were a few individuals who did not carry enforcement authority; most of them did.

* * * *

[50] Q During the period of time with which you are familiar with Cook Inlet, that is the enforcement activi-

ties of your service, are you aware that any foreign fishing activities—by foreign fishing I would refer to vessels of a foreign country, nationals or residents of a foreign country, [51] that sort of thing—was there any of this type of activity carried on in Cook Inlet?

A Not that I am aware of.

Q By that, just for purposes of that question, I would say again, north of the line from Point Gore to the Barren Islands to Cape Douglas?

A Yes; none in that area that I know of.

Q Were you under any particular directives, oral or otherwise, with respect to what it was your responsibility to do had you discovered or been made aware of any foreign fishing activity north of the line which I've described?

A We were under instructions that had we found a Canadian halibut vessel violating halibut regulations that he was to be apprehended and turned over to the government in Canada for prosecution in accordance with the Halibut Convention. Other than that we had no specific instructions concerning other foreign activity.

Q During that period of time when you were in the District Office in Anchorage what would you have done had a foreign fishing vessel shown up in any of the waters north of a line from Point Gore to Cape Douglas or the Barren Islands to Cape Douglas?

A I would have asked for advice from my supervisor.

Q In respect to the Canadian vessels and the halibut fishery to which you refer, would that action which you described [52] you would have taken apply to a vessel located anywhere north of the line from Point Gore to the Barren Islands to Cape Douglas?

A If he was violating halibut regulations, yes.

Q I take it then you were not aware whether any foreign vessels have ever been arrested in Cook Inlet for violation of any fishery law or regulation of the United States or the violation of any treaty of the United States?

A There were none apprehended and there were none in the inlet to my knowledge when I was there. I am aware of some previous cases that were cited in, oh, for instance, the Amicus Curie.

Q I think that related to Bristol Bay, but so far as Cook Inlet is concerned you are not aware of any?

A No.

* * * *

[59] Q I'm going to hand you what has been marked for identification as Deposition Exhibit "3" and ask you if you recognize that.

A Yes, I recognize it.

Q Would you describe what it is, please?

A It's a response to Mr. Clarence Nordal, Deep Sea Fishermen's Union of the Pacific, Seattle, which I prepared in April of 1969.

Q At whose direction then was this letter written?

A At my direction.

Q You wrote it without any direction from a superior in your department or any other department?

A Let me put it this way: Mr. Nordahl's letter came in and was routed through my Regional Director's office, was sent down to me to respond to the letter, and my Regional Director was aware of my response.

Q Prior to your writing of this letter did you confer with any other officials, agencies, employees, or persons with responsibility to the Federal Government?

A No.

Q Specifically did you discuss this matter with any persons from the Department of Justice?

A No.

Q From the State Department?

[60] A No.

Q Referring again to Exhibit "3", on page two the portion right after the listing of the radio stations, commencing, "The highly irregular and deeply indented Alaskan coastline" and so on—in that paragraph you state generally that the United States has subscribed to the semi-circle test and the twenty four-mile closure lines, and in that you reached the conclusion as follows, "Using these procedures and guidelines provided us by the Department of State, the closure line," (I'm paraphrasing) in Cook Inlet intersects the southern tip of Kaglin Island quite some distance up the inlet. Upon what did you base this conclusion of yours in the letter?

A This was based upon the State Department publication referred to which was by G. Etzel Pearcy concerning measuring of the U.S. Territorial Sea and from charts which we have for enforcement guidance which we referred to before.

Q Those are the charts which you got in 1963?

A Yes.

Q And the State Department publication, do you recall its date?

A No, I don't. It's quite old because I know we've had it in our office quite some time.

Q Was it in existence, say, when you were in the Anchorage District Office?

[61] A I don't know.

Q Had you reached this opinion or conclusion stated in this part of the letter to which I referred on the basis of consultation with any individuals?

A No.

Q In other words, the only two things you relied upon were the State Department publication and the charts; is that correct?

A Yes.

Q Is a copy of the State Department publication in your files?

A Yes.

Q Would that be made available for inspection and copying by the State of Alaska?

A Yes.

Q Had you formed your opinion and conclusion relative to the existence of the closure line across Cook Inlet south of Kalgin Island at any time prior to your writing of this letter of April 1, 1969?

A I had concluded upon receiving these charts for our guidance that this apparently was the closure line by which we were to abide.

Q In other words, it's fair to say the first time you reached this particular conclusion was sometime in 1963?

A Yes.

• • • •

[66] Q Incidentally, would records of activities in Shelikof Strait, the arrest records and what have you, be also on file in this office here in Juneau?

MR. CHARNEY: I would object to that for the same reasons.

A Yes, either in Juneau or in the Federal Records storage. It depends on the type of violation you're discussing. In my office we have a complete file on at least the halibut violations, as I recall, since about 1950, and violations again preceding Statehood involving Shelikof Strait or any other area are in Federal Records in storage.

• • • •

[68] CROSS EXAMINATION

BY MR. CHARNEY:

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• • • •

[71] Q Did you patrol off of Resurrection Bay?

A Yes.

Q Where is that?

A The southern portion of Cook Inlet. It's the entrance to the City of Seward.

Q Did you patrol off of Aialik Cape?

A Yes, we patroled off Aialik Cape?

Q Did you patrol more than three miles from Aialik Cape?

A Yes, we did; as well as other areas on the south side of Kenai Peninsula.

Q More than three miles off shore?

A More than three miles off shore, yes.

Q And more than three miles from the closing line of Resurrection Bay?

A Yes, or the other bays.

Q You mentioned the Halibut Convention. What countries are members of it?

A The United States and Canada.

Q Does the Convention give the United States jurisdiction over Canadian vessels?

A Yes, in international waters.
Q On the high seas?
A On the high seas.
[72] Q How does this work?
A The Convention between the two governments says that vessels of either country when found violating regulations of the Convention can be seized in convention waters, which includes the high seas, and transferred to the flag government for prosecution.
Q Who promulgates the regulations?
A The International Pacific Halibut Commission, which is a body formed under the auspices of the Halibut Convention.
Q Are they the only regulations under the Halibut Convention?
A Yes.
Q Then when you spoke of enforcing the halibut regulations you meant the Convention regulations?
A Yes.
Q And you could seize a Canadian vessel violating these regulations on the high seas?
A Yes.
Q Can foreign vessels be seized by the United States on the high seas while fishing, absent a convention such as the Halibut Convention?
A No.
Q Thus if a Soviet vessel fished right alongside the Canadian vessel for halibut during the closed season you could arrest the Canadian vessel but could you arrest the Russian?
A No. We could seize the Canadian vessel but not the Russian.
[73] Q You described limits of borders in your letter to Mr. Nordahl, Deposition Exhibit "3". Are those the closing lines for Cook Inlet that are found on the maps referred to in Deposition Exhibit "1"?
A Yes.
Q So that set of maps shows high seas in lower Cook Inlet?
A It shows the area outside three miles for enforcement purposes.

• • • •

Q Had anyone ever told you that Cook Inlet was inland waters or territorial sea?
A No.
Q Were you ever told whether the White Act or its regulations were to be enforced against foreigners?
A No, I wasn't.
Q What were you to do in the case of foreign fishing in Cook Inlet?
A We were under no direct instructions as to what to do in the event we found a foreign fishing vessel. In the absence of these instructions, of course, as always we were to seek [74] advice from the District Office, or Juneau in the absence of a District Office.
Q Subsequent to the receipt of the maps referred to in Deposition Exhibit "1" were the enforcement activities of N.M.F.S. (then B.C.F. and now N.M.F.S.) fashioned on the basis that lower Cook Inlet was high seas or territorial waters?
A We had no specific procedure in mind there. We did not know whether it was high seas or territorial waters.
Q I'm saying subsequent to.
A Oh, subsequent to the receipt of the charts?
Q Yes.
A We treated them as being high seas in accordance with those maps we received.

• • • •

[75] Q To your knowledge have there been any arrests or boardings in Cook Inlet in the area described as high seas in the Nordahl letter, Deposition Exhibit "3"?
A Arrests while I was working in Cook Inlet or subsequent to that?
Q Right.
A No, there haven't been.

• • • •

[2] RONALD C. NAAB,

called as a witness by the defendant, having been duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Ronald C. Naab.
Q And what is your address.
A My working address is National Marine Fisheries Service, Box 1668, Juneau.
Q What is your age?
A I'm thirty-nine.
Q What is your present occupation?
A I'm supervisor of the Enforcement and Surveillance Division of the National Marine Fisheries Service.

MR. CRANSTON: May I ask who just walked into the room?

MR. CHEEK: This is Mr. Weberg of the Alaska Department of Fish and Game.

Q Are you the same Ronald Naab whose deposition was taken earlier in this action, in February of 1971?
A Yes, I am.
Q Were you served with a Subpoena Duces Tecum to appear at this deposition?
[3] A Yes, I was.
Q Have you brought any documents with you which were described in that Subpoena Duces Tecum?
A I have brought the documents which I thought were responsive to the Subpoena.
Q Are those documents certain maps and charts pertaining to Alaska?
A Maps and charts pertaining to lines off Alaska, together with file material and correspondence relating to these lines.

MR. CRANSTON: At this point I will ask for a short recess in order that the State may examine the

documents which have been brought in preparation of asking further questions.

(RECESS)

MR. CRANSTON: First I would like marked as Defendant's Exhibit 1 to this deposition a map, number 1-J, "Department of Lands, Forests and Water Resources, British Columbia", a map of British Columbia. If you would staple "Exhibit 1" onto this map for identification, please.

(Whereupon the above-described map was marked Defendant's Exhibit "1" by the reporter.)

MR. CHARNEY: Mr. Cranston, before we proceed I think it would be appropriate to get on the record what [4] we've agreed to do with respect to these documents. Do you want me to state it or do you want to?

MR. CRANSTON: All right. The State proposes to do the following with these exhibits: that each exhibit will be identified by virtue of a slip of paper with the exhibit number on it. That paper will be stapled to the map. The map will then be transmitted to a company or facility capable of reproducing the map and the reproduction copy of the map shall be attached as the physical exhibit to the deposition. Copies will also be sent to the plaintiff and the defendant as exhibits to their copies of the deposition. The Federal Government, the State understands, if this procedure is followed will not raise the best evidence objection relative to the exhibits which may be introduced in evidence as copies of the maps which are lodged in the Juneau office of the National Marine Fisheries Service. Is this your understanding, Mr. Charney?

MR. CHARNEY: Yes, substantially. What I would prefer, and and I hope this would be appropriate, is that the documents that we are looking at today will be kept in the custody of National Marine Fisheries Service until the State of Alaska notifies Mr. Naab [5] of the firm to which these documents shall be sent. They will be sent directly to them for reproduction and return of the originals to National Marine Fisheries Service of Juneau. Is that appropriate or how would you like it to be done?

MR. CRANSTON: This is fine, so long as the copies are retained separately together with the exhibit numbers remaining on them.

MR. CHARNEY: Retained forever?

MR. CRANSTON: No; until they are sent down to the reproduction agency.

MR. CHARNEY: Fine.

Q Mr. Naab, I will hand you Defendant's Exhibit "1" and ask you if this has been retained in the files of the Juneau office of the National Marine Fisheries Service.

A Yes, it has.

Q Would you, if you know, describe the manner in which this map became lodged in the files of the National Marine Fisheries Service?

MR. CHARNEY: At this point I will enter a general objection as to the questions with respect to this exhibit; objection on the grounds of relevance.

MR. CRANSTON: You may continue to answer the question.

A The chart was prepared by one of my subordinates for use at a meeting with Canadian fisheries officials. As I [6] recall it was held in Seattle. The general subject of the meeting, as I remember, was lines beyond which U.S. and Canadian nationals would not be permitted to fish salmon with nets.

Q Do you know what subordinate of yours prepared this map?

A Sid Morgan.

Q Is he still with your office?

A No, he's not.

Q Do you know where he is?

A He was transferred to the Bureau of Sport Fisheries and Wildlife here in Juneau.

Q Do you know what position he held when he prepared this map for you?

A He was a Fisheries Management Agent with my office here.

Q When was the map prepared?

A As I recall, it was in the fall of 1965.

Q Was the meeting at which this map was presented also in the fall of 1965?

A I think so.

Q What nations were in attendance at this meeting?

A I was not at the meeting itself. I presume there were Canadian officials and U.S. officials.

Q And the meeting was in Seattle?

A As I recall.

MR. CHARNEY: I object to this as hearsay.

[7] Q You did testify that you knew the purpose of the meeting; is that correct?

A I said I thought that was the purpose of the meeting.

Q Was the meeting, so far as you are aware, engaged in between the United States and Canada pursuant to any treaty or any other agreement between the United States and Canada?

A No.

Q Was it used for the purpose of implementing or establishing a practice under any treaty that exists between the United States and Canada?

A Perhaps, indirectly. The United States regulation concerning offshore net fishing is a regulation that was brought into effect under the authority of the International North Pacific Fisheries Convention, which includes the United States, Canada and Japan.

Q And you say this line on this map was drawn to indicate the line seaward of which fishing for salmon with nets would be prohibited?

A The lines that are shown on this map, the ones off the British Columbia coast, are a copy of the salmon net fishing lines, or surf lines as the Canadians call them, beyond which they do not allow their nationals to fish for salmon with nets. This was copied from a Canadian chart. The other lines off Southeast Alaska are a copy or a duplication of the three-mile limit prepared by Mr. Pearcy [8] in 1963, which was sent to us for enforcement and guidance purposes. It was not put on here to have any direct relation to salmon net fishing off Southeast Alaska.

Q By Mr. Pearcy you refer to Edsell Pearcy?

A G. Edsell Pearcy, Department of State; yes.

Q Do I understand you correctly that the line off Southeast Alaska on this chart is not intended to have any effect upon the fishing for salmon with nets on the high seas?

A It does not depict the line, or a line beyond which they cannot fish for salmon. I believe it was prepared mainly to get a comparison between what the Canadians use as their surf lines and what could be used by the United States as a comparable line for U.S. nationals.

Q Is there any chart or map which you have brought with you or of which you may be aware which continues the line depicted on Exhibit "1" past Cross Sound?

A I would have to look at what I've brought with me. There may be a possibility of some inside this other tube.

Q All right.

(Whereupon witness examined other maps and charts.)

A Apparently the line was only projected to cover the waters off Southeast Alaska and it was not drawn past the entrance to Cross Sound.

Q Again, this is an exact replica you say, of a line prepared by G. Edsell Pearcy?

[9] A Mr. Morgan was instructed to copy the lines that Mr. Pearcy had prepared and put them on these new charts. I suspect that other than perhaps some minor errors they are an exact copy, yes.

Q What was the purpose again for which Mr. Pearcy prepared these lines?

A The charts which Mr. Pearcy prepared were—they were transmitted to us with a covering memorandum indicating that these depicted what could be considered the current U.S. three-mile limit, territorial sea limit, and also on those charts were some possible base lines which might be applied by the United States. The charts were sent to us with instructions to conduct a study as to what additional fisheries resources might be protected by the United States if these possible base lines were put into effect.

Q Have you brought with you the original charts and the cover letter of Mr. Pearcy?

A I have the charts and I'm sure the cover letter is also here.

Q Would you produce them, please?

A Yes.

Q Mr. Naab, you have produced a set of charts numbered 1 through 18. However, I do not find a number 6 on these charts. Is there a chart numbered 6?

[10] A The last time Mr. Morgan had occasion to use these charts he noted that chart number 6 was missing. I presume there was a chart number 6 and somewhere throughout the years it has been lost.

Q Do you know the area of the coast chart number 6 depicted?

A I am pretty sure it must have covered the area between chart number 5 and chart number 7, the area between Yakutat Bay and Prince William Sound, presumably the Copper River area.

MR. CRANSTON: I would think it might be best to treat this series of charts as one exhibit with each portion of the exhibit further identified by the chart which is numbered in it. So I would ask the reporter to mark for identification the series of charts numbered 1 through 18, less chart numbered 6, as Defendant's Exhibit "2" to this deposition. Those were the charts described by the witness as being transmitted to the National Marine Fisheries Service under a cover letter as those charts upon which the Geographer of the United States, G. Edsell Pearcy, drew some lines.

A Here's the transmittal letter.

MR. CHARNEY: I would recommend that each exhibit be marked "2-A" or whatever it is all the way through.

MR. CRANSTON: This is fine. Chart 1 will be marked [11] as Exhibit "2-A", chart 2 "2-B", and then consecutively throughout, using letters following the numbers of the charts.

(Off the record)

(Whereupon the above-described charts were marked Exhibits "2-A" through "2-Q" by the reporter.)

MR. CRANSTON: I would ask the reporter to mark as Defendant's Exhibit "3" the memorandum dated May 20, 1963, to the Regional Director, Region 5, Bureau of Commercial Fisheries, Juneau, from Director, Bureau of Commercial Fisheries; Subject: Instructions re Baselines Charts for Alaska.

(Whereupon the above-described document was marked Defendant's Exhibit "3" by the reporter.)

Q Mr. Naab, I'll hand you what has been marked as Defendant's Exhibit "3" and ask you if this is the letter which accompanied the charts identified in their entirety as Exhibit "2" to this deposition.

A Yes, it is.

Q With respect to the charts described in their entirety as Defendant's Exhibit "2", has any use been made of them by you or anyone in your office?

A Yes.

Q What particular use has been made of them?

A For one thing they were the basis for the study that was requested in that memorandum, and they have been used, [12] as I indicated, to give us guidance on a number of things such as a comparison with the Canadian surf lines as to what might be construed as being the U.S. Territorial Sea of Alaska. They were forwarded to us as guides to use in our enforcement of the three-mile limit.

Q I notice that each of the charts has numbers appearing on them. For instance, Exhibit "2-A" has a black line with the numbers 112-30 within two black lines. What does that indicate?

A Those lines and code designations were put on the charts by our Statistics Liaison Officer here in Juneau and they were to determine the Alaska Department of Fish and Game statistical areas encompassed within these particular areas so that we could use the Alaska Department of Fish and Game catch statistics in determining what additional fisheries resources would be protected by a possible straight baseline system.

Q You have indicated that you did make a study as requested by the memorandum described as Exhibit "3".

The study to which you refer is—I assume that it involves the additional fishery resources, in terms of annual poundage and value of present and reasonably potential use which would be reserved to American fishermen by application of straight baselines?

A Yes, I think it is.

[13] Q Was that study ever prepared in writing?

A Yes, it was.

Q Have you brought a copy of that study with you?

A Yes, I have it here.

Q Could I see it, please?

A Yes.

MR. CRANSTON: I would like to have this document dated July 12, 1963, and entitled "Additional Fishery Resources of the Alaska Coast which would be reserved for American Fishermen if the United States adopt the 'Straight Baseline Method' as set forth in The Geneva Convention, 1958" Exhibit "4".

(Whereupon above described document was marked Defendant's Exhibit "4" by the reporter.)

Q Mr. Naab, I'll hand you Exhibit "4" and ask if that is the study to which you referred as having been made as a result of the request contained in Exhibit "3"?

A Yes, it is.

Q On Exhibit "2-H", which depicts the region of Lower Cook Inlet, there appear blocks within black lines with numbers in them. These are again—for instance, number 249, this is an Alaska Department of Fish and Game statistical area?

A Yes, I'm sure it is.

[14] Q Do you know exactly to what use the Alaska Department of Fish and Game puts these statistical areas?

A I don't know what uses they make of them but that's the areas that they use in which to determine the amount of catch that came from any particular area.

Q And these are the boundaries, so far as you understand, of the statistical areas as described in the regulations of the Alaska Department of Fish and Game?

A That's my understanding.

Q Let me ask this question, Mr. Naab: Who was actually responsible in your office for making the actual comparisons between what the difference between fishery resources outside the three-mile limit and inside the three-mile limit would be? Was there one person assigned to this task in particular?

A Yes, there was. He was not directly connected with my office. He was the Statistical Liaison Officer at the time.

Q What was his name?

A William K. Evans.

Q Is he still with you?

A No, he is not.

Q Do you know where he is?

A The last I had heard of him he was in private business in Anchorage.

Q What was his exact position with the Bureau of Commercial [15] Fisheries at that time?

A Statistical Liaison Officer.

Q Who gave him instructions as to how to prepare his study?

A I presume it would have been given to him by the Regional Director, which would include the Assistant Regional Director or Regional Director Rietze.

Q Who would the Assistant have been at that time?

A At that time it was Robert Simpson.

Q Do you know, with regard to the area of Lower Cook Inlet, if included within the statistics of the then fish resource under the jurisdiction of the State or of the United States if included therein were the Fish and Game statistical areas as depicted on this chart? Do you follow my question?

A No, I don't.

Q As I understand it the study was to determine, was it not, the additional fishery resource which would become available to our jurisdiction (I mean the United

States' jurisdiction) if the system of straight baselines were followed; is that correct?

A Yes.

Q In Lower Cook Inlet we have, for instance, Statistical Control Area 249. Was the fish resource within that area included within the base resource available under United States jurisdiction by virtue of the application of the three-mile limit or was it considered as an [16] additional resource which would become available if a system of straight baselines were followed? I'm trying to determine in which category Control Area 249 was placed.

A I cannot be sure what catch statistics Mr. Evans included in the specified areas. However, in looking at these charts I would presume that catch statistics for 249 would not fall in either category because the possible three-mile zone is shown in red here. The additional areas that would be encompassed by a straight baseline are shown in green, and neither of those zones occur in Statistical Area 249.

Q I take it then that 249 would not have been included in either of the catch statistics, either those which were available by virtue of an application of an assumed three-mile limit in Cook Inlet or straight baselines?

A Again, I did not make the study, but looking at the charts I would think not.

Q In other words, it would be your opinion on analyzing the charts that 249 would be subtracted from either of those totals?

A I don't think 249 statistics would enter into the totals at all. Again I'm speculating because I didn't do the actual study myself.

Q And Mr. Evans would be the person most likely to know this?

A I would think so.

[17] MR. CHARNEY: Would you tell me what map we're looking at here, the number?

MR. CRANSTON: This is Exhibit "2-H".

Q Do you know whether these maps which are in the aggregate depicted as Exhibit "2" have been transmitted to any foreign countries?

A I don't believe they have; not to my knowledge.

Q Were there any other areas of the United States for which similar charts or maps were prepared with the same purpose in mind?

A I don't know.

MR. CRANSTON: Let's go off the record a minute.

(Off the record)

MR. CRANSTON: I would have marked as Defendant's next in order (that would be 5) Coast and Geodetic Survey Chart 8152. Fourth Edition, March 11, 1933; revised March 9, 1959; also corrected through Notice to Mariners Number 14, April 4, 1959; with a black line and other assorted dotted pencilled lines along the coast from Dixon Entrance to Chatham Straits.

(Whereupon above-described document was marked Defendant's Exhibit "5" by the reporter.)

Q I'll hand you what has been marked for identification as Defendant's Exhibit "5" and ask you if you can tell me [18] first, is this a chart which is lodged in the Juneau office of the National Marine Fisheries Service?

A Yes, it is.

Q Can you tell me what the origin of this chart was, if you know?

A As I recall, this chart was also prepared for the meetings with the Canadians concerning offshore salmon net fishing.

Q Are these the same meetings you earlier testified to as having taken place in the fall of 1965?

A As I recall; yes.

Q Could you tell me then exactly what this thick black inked line is intended to depict?

A This chart was prepared, again, by Mr. Morgan. The heavy black line should be a replica of the possible three-mile limit as defined on the earlier charts referred to as prepared by Mr. Pearcy.

Q Then this was the line beyond which it would be prohibited to take salmon by nets on the high seas?

A No.

Q Was it intended to be used at all for that purpose?

A I think the intent was to show the difference between high sea salmon net limitations as to a line, between a surf line as applied similarly by the Canadians, and the prohibition on fishing outside a three-mile territorial sea.

Q Is there a surf line depicted on this chart?

[19] A There are some lines on here which are depicted as possible surf lines which the United States could adopt.

Q Let's just get one basic concept clear at this point. What do you refer to by the term surf line?

A The surf line I'm referring to—what the Canadians term a surf line is a line beyond which they do not allow their nations to fish for salmon with nets.

Q Does this have any relationship to the physical location of the surf?

A Judging from the lines that I've seen on the Canadian charts I would say there is very little relationship to the surf. In many cases the lines are quite some distance offshore, far beyond where you would have an active surf.

Q How do you characterize the standards used by the Canadians then in drawing their so-called surf lines?

A I really couldn't characterize how they do them. I don't know what standards they use. I know they have these charts which show this line and they refer to this line as a surf line.

Q Could you describe the various other lines? For instance, there is a solid pencil line on this chart. What is that to depict?

A All of the pencilled lines on this chart—as I understand it, Mr. Morgan was asked to study the surf lines [20] applied by the Canadian Government with particular interest as to how far or how long these lines might be between certain headlands, and then to prepare this chart with a variety of alternative lines which would be in general accordance with the same principals used

by Canada. In other words, the lines would not be any longer than any of the Canadian lines that were used. This then would give us a comparison between a three-mile limit and a number of alternative lines which were similar to the Canadian surf lines.

Q You say that in fact none of these lines actually represent a line setting out the boundary or the line beyond which it is not permitted to fish for salmon with nets; is that correct?

A No, they do not.

Q Has any such line been established as to waters off the coast of Alaska?

A Beyond which they cannot fish for salmon?

Q Yes; with nets.

A No, there has not.

Q I take it, however, such line has been established by the Canadians; is that correct?

A That is my understanding; that a surf line is such a line.

Q Is your office charged with the enforcement of the prohibition against fishing for salmon with nets on the [21] high seas?

A Yes, it is charged with net prohibition on U.S. nationals.

Q What documents, charts, maps, or other criteria do you then rely on in order to determine the areas beyond which a person may not fish for salmon with nets?

A We rely upon the definition of the area in which salmon fishing is permitted as it appears in the Federal Regulations, Part 210, 50 C.F.R.

Q Have those regulations ever been made the subject of any chart, diagram, or memorandum upon which a line might appear?

A Not to my knowledge.

Q So then as to Exhibit "5" the solid black line as you can best recall is the reproduction of Edsell Pearcy's line in this area as set forth on the comparable exhibit in Exhibit "2"?

A Yes.

Q Has any other use been made of Exhibit "5" except as you have testified?

A I did not attend the meeting with the Canadians and I can only presume that this chart and some others similar to it were taken to the meeting and were probably the subject of discussion.

MR. CHARNEY: I object on the basis of hearsay.

Q —with the Canadians?

[22] A I don't know if they were presented to the Canadians or not.

* * * *

MR. CRANSTON: I would like to have marked as Defendant's Exhibit "6" to this deposition Chart 8152, Coast and Geodetic Survey, Sixth Edition, March 29, 1965; corrected through Notice to Mariners No. 5, January 29, 1966; the chart containing an orange line and assorted inked and pencilled lines from Dixon Entrance to Chatham Strait.

(Whereupon the above described document was marked Defendant's Exhibit "6" by the reporter.)

Q Mr. Naab, I will hand you what has been marked as Defendant's Exhibit "6" and ask you if this exhibit is lodged with the Juneau office of the National Marine Fisheries Service.

A Yes, it is.

Q Can you describe the origin of this exhibit?

[23] A This is one of the charts I just referred to a moment ago as being similar to Defendant's Exhibit "5". Its origin, again, as I understand it, was for use at the meeting with the Canadians concerning offshore net fishing for salmon.

Q Is this the same meeting to which you have referred, the fall of 1965 meeting?

A Yes.

Q Did Mr. Morgan also prepare this chart?

A Yes, he did.

Q The solid orange line is intended to depict what?

A The solid orange line depicts the three-mile limit as shown on the Pearcy charts which were referred to earlier.

Q What is the blackened area intended to show, if you know?

A The shaded areas on this chart lying west of Noyes Island and west of Baker Island are intended to show the areas of U.S. salmon net fishing.

Q Is all of this area—according to this chart then it is within the three-mile limit as delineated by Mr. Pearcy on his charts; is that right?

A That's as it appears here, yes.

Q The solid orange line is intended to be an exact replica of the line drawn by Mr. Pearcy and the comparable area on Exhibit "2"?

A Yes.

Q What are the other lines, the pencilled lines, intended [24] to represent?

A As in the previous chart, the pencilled lines represent some possible lines drawn on the same general principals as the Canadian surf line.

Q Was this chart, if you know, ever presented to the Canadians?

A I do not know.

Q When you talk about net fishing as indicated by the darkened areas on the chart what type of net fishing are you speaknig of?

A I think it's primarily seine boats.

MR. CRANSTON: I would like marked as Defendant's Exhibit "7" Coast and Geodetic Survey Chart 8152, Sixth Edition, March 29, 1965, together with a stapled typewritten statement indicating that, "This is a composite chart showing territorial waters from Chart No. 2 and surf line Southeast Alaska from Chart No. 3, solid black line represents territorial waters, dotted black line represents surf line. This chart is corrected through Notice to Mariners No. 16 dated April 17, 1965."

(Whereupon above described chart was duly marked Defendant's Exhibit "7" by the reporter.)

Q Mr. Naab, I'll hnad you Defendant's Exhibit "7" and ask you [25] if this is lodged within the files of the National Marine Fisheries Service in Juneau.

A Yes, it is.

Q Would you describe the origin of this exhibit?

A I believe this chart was also prepared for use at the meeting with the Canadians in the fall of '65 concerning offshore salmon net fishing.

Q Was this also prepared by Mr. Morgan?

A Yes, it was.

Q What does the landward solid black line on this chart indicate?

A It would appear that this is closure lines across the bays.

Q Do you know what standards were used in order to draw that landward black line on this chart?

A On this chart I am sure Mr. Morgan copied the similar lines that appeared on Mr. Pearcy's charts.

Q By that you refer to the comparable chart in Exhibit "2"?

A Yes.

Q What is the seaward black line intended to indicate?

A This would be the extent of the three-mile limit.

Q Is that also based on Mr. Pearcy's depiction of the three-mile limit on Exhibit "2"?

A It should be.

Q What do the darkened areas, cross-hatched areas indicate?

A The shaded areas on this chart are the same as the ones [26] on previous charts. They indicate the area of current U. S. net fishing off Noyes Island and Baker Island.

Q There's a dashed line on this chart in black. What does that indicate?

A This would represent a possible line drawn on the same principals as the Canadian surf line.

Q Again, do you know if this chart was ever presented to the Canadians at this meeting?

A No, I do not.

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MR. CRANSTON: I would like marked as Defendant's Exhibit 8-A through 8-F a series of charts, each a separate exhibit. For instance, Exhibit 8-A consists of a base map on the U. S. Coast and Geodetic Survey

series together with an overlay, each of the overlays containing the notation, "Proposed baseline from which to measure three-mile limit for fishery regulations." 8-A would be an overlay for U. S. Coast and Geodetic Survey Chart 8002 dated June, 1936, Seventh Edition. 8-B is an overlay stating, "Proposed baseline from which to measure three-mile limit for fishery regulations," an overlay for U. S. Coast and Geodetic Survey Chart 8502, dated August, 1944, [27] Eleventh Edition. 8-C containing an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 8802, and that chart being the Eighteenth Edition, December, 1952. 8-D being an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 9302, Seventeenth Edition, December, 1952. 8-E being an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 9102, the Eleventh Edition, dated October, 1951. 8-F being an overlay entitled, "Proposed baseline from which to measure three-mile limit for fishery regulations," overlay for U. S. Coast and Geodetic Survey Chart 1400, that chart being the Sixth Edition, dated May, 1947.

The overlays on each chart will be indicated by the single exhibit number: for instance, 8-A. The base chart of the U. S. Coast and Geodetic Survey shall be indicated on each exhibit; for instance, by Exhibit 8-A Prime.

(Whereupon the above described documents were market [28] Defendant's Exhibits "8-A" through "8-F" by the reporter.)

Q Mr. Naab, I will hand you what has been marked in the aggregate as Defendant's Exhibit "8-A" through "8-F" and ask you if these overlays and the underlying U. S. Coast and Geodetic Survey charts are lodged with the files of the Juneau office of the National Marine Fisheries Service.

A Yes, they are.

Q What do you know concerning the origin of these charts?

A Everything I know about these charts is what has been told me by others. I was not in the Juneau office here at the time these were prepared.

Q Let me ask some basic questions here. First, do these charts which we have before us, marked in the aggregate as Defendant's Exhibit 8, represent the originals of these charts?

A As far as I know they do, yes.

Q Are there any other copies of these which are located elsewhere so far as you know?

A Not to my knowledge.

Q Before you tell me anything more about them, from whom have you received your information concerning these charts?

A From Mr. Clay Scudder, who was my predecessor in this job.

Q With regard to him, when did you receive this information?

A It would have had to have been sometime in early '61 because he retired, as I recall, in the latter part of 1961.

[29] Q From whom else have you received information concerning these?

A Mr. Rietze and I have discussed these charts, and I have seen information concerning these charts in our files.

Q With respect to that information, have you brought the information you've just discussed with you to this deposition?

A Yes, we have it here.

Q Could you find it for me in any of this material?

(OFF THE RECORD)

Q Mr. Naab, have you found the information regarding Exhibit "8-A" through "8-F" which you've described?

A Yes, I have here copies of the information which I mentioned.

MR. CRANSTON: I would like a series of memoranda consisting of the following documents marked as Defendant's Exhibit "9". The documents are as follows:

Memorandum dated March 29, 1957, to the Administrator, Alaska Commercial Fisheries, from the Assistant Administrator for Staff Coordination, Alaska Commercial Fisheries; subject: Report on Attendance at International Conference February 27 and 28, 1957—Seattle, Washington. That memorandum consists of two pages.

A second memorandum dated June 11, 1957, to the Director, Bureau of Commercial Fisheries, [30] Washington, from Acting Administrator, Alaska Commercial Fisheries, Juneau; Subject: Offshore fishing—Alaska, consisting of three pages.

A memorandum dated October 30, 1958, to the Regional Director, Bureau of Commercial Fisheries, Juneau, from Chief, Branch of Alaska Fisheries; Subject: Alaska North Pacific offshore fishing boundary; that memorandum consisting of two pages.

A letter from M. Cadieux, for the Under-Secretary of State for External Affairs, Department of External Affairs, Canada, to a Mr. Thompson, Minister, United States Embassy, that letter dated October 7, 1958, consisting of one page.

A memorandum to the Director, BCF, Washington, D. C., Attention, Chief, Branch of Alaska Fisheries, from the Regional Director, BCF, Juneau; Subject: Alaska North Pacific offshore fishing boundary, dated November 3, 1958.

A memorandum dated November 12, 1958, to the Regional Director, Bureau of Commercial Fisheries, Juneau, from Chief, Branch of Alaska Fisheries; Subject: Alaska North Pacific Offshore Fishing Boundary; that memorandum consisting of two pages, apparently with some attachments. Let me ask you with regard to this memorandum, Mr. Naab.

[31] I will hand you this letter and ask you to look at it and describe it. It describes other documents.

(Above-described letter examined by the witness.)

A I do not recall seeing these attachments in our files.

Q So, so far as you are able to testify now these attachments described in the memorandum we've just been discussing are not in your files?

A Not that I know of.

Q Would you know what files of the United States Government they might be in?

A No, I don't.

Q I also notice that the memorandum to the Administrator, Alaska Commercial Fisheries, from the Assistant Administrator for Staff Coordination dated March 29, 1957 (that was written by John T. Gharrett) contains some attachments. The letter contains a paragraph as follows. It is a report on attendance at an international conference on February 27 and 28, 1957 at Seattle. John Gharrett states: "The meeting was held in Seattle at the laboratory of the Washington State Fisheries Department. I attended as a member of the United States delegation to discuss the control of offshore fishing, primarily salmon net fishing, with representatives of the states of California, Oregon and Washington and the Canadian Government. Those present and subjects under discussion are set forth in [32] the attachments to this memo, some of which are confidential." I'll hand you a copy of that memo and ask you if the attachments described which are not with this exhibit are in your office.

A I have not seen those attachments to my knowledge.

Q Could they be in your files?

A I don't believe they are in the files maintained by my office, no.

Q Or any portion of the Juneau office of the National Marine Fisheries Service?

A The only other possibility would be the files that are maintained by the Regional Director.

Q And this would be Mr. Rietze; is that correct?

A Mr. Rietze; correct.

Q Would you know what other agency or office of the Federal Government, including National Marine Fisheries Service, might have those documents?

A No.

MR. CRANSTON: I would like to have again a short recess in order to have time to look over this exhibit.

(Whereupon the above-described group of documents was marked Defendant's Exhibit "9" by the reporter.)

(10-MINUTE RECESS)

Q Mr. Naab, I'll hand you what has been marked for identification [33] as Defendant's Exhibit "9", consisting of a series of letters and memoranda I've described. Is this the series of correspondence to which you referred as forming the background for the charts depicted in Exhibit "8-A" through "8-F"?

A Yes, this is the material I have seen in our files.

Q Do you know who prepared these charts?

A Again, I have been told they were prepared by—at least it involved Mr. Gharrett, who was the Regional Director at the time, and Mr. Scudder, whom I mentioned previously.

Q Do you know the role that either of them, or have you been told the role that either or each of them played in the preparation of these charts?

MR. CHARNEY: I gather we're going to be continuing on this questioning. That would be all hearsay, and I'll make a general objection to it.

A I don't know what role each of them played.

Q Have you received any information regarding specifically what Mr. Gharrett did?

A No.

Q Or what his responsibility was?

A No.

Q Have you received any information or do you know otherwise what Mr. Scudder did or what his responsibility was?

[34] A From my conversations with Mr. Scudder I got the impression that he had the major role in actually drawing the lines.

Q In other words he physically, to the best of your knowledge, placed the line on the chart?

A I would say so from his conversation.

Q Did Mr. Scudder tell you the criteria he followed in placing the lines on these charts depicted in Exhibit "8-A" through "8-F"?

A He told me the purpose of the proposed line was to allow the continuance of existing United States salmon fisheries in the areas that they currently existed and to prevent the development of new high seas or offshore salmon net fisheries.

Q Then this line, so far as you understood, was related to the problem of fishing with nets for salmon on the high seas?

A Yes.

Q And was it your understanding that this chart marked a baseline from which a three-mile limit would be measured beyond which it would be prohibited to fish for salmon with nets?

A That would be my interpretation of the conversations and also the notation that appears on each of the overlays.

Q Is there any other knowledge you have concerning Mr. Scudder's role in drawing these maps other than what [35] you have testified?

A Not that I know of.

* * * *

Q Just to get one other thing straight, the only other notation that appears on any of these overlays is the one on exhibit "8-B". It contains the notation, "DWC 4/8/71". What does that indicate, if you know?

A Earlier this year Mr. Cheek from your office was in our office researching this case and these charts were made available to him, and Mr. Cheek copied several of them. I suppose that's his notation that he has copied them.

* * * *

[36] Q Did you have anything to do with National Marine Fisheries Service, or Bureau of Commercial Fisheries, or any other Fish and Wildlife Service organization during the period of time here relevant; that is, the 1957 period?

A Yes. I was with the Bureau of Commercial Fisheries from May of 1957 to September of 1959, working as a Fisheries Management Biologist in Cook Inlet. I had no duties relative to this study or those meetings.

Q Did you consult at all with Mr. Scudder at all or anyone else concerning these charts?

[37] A No, I did not see them until I arrived here in Juneau in '61.

* * * *

[38] Q Just from a physical standpoint then, there are files located in your particular office complex and then in some other room or rooms of this particular office of National Marine Fisheries Service there are other files; is that correct?

A Yes. Most of the offices here maintain their own files on their own discipline. In addition, the Regional [39] Director's Office maintains files on not only its own discipline but also on some other related subjects, and again at this particular time in 1957 there was not an enforcement and surveillance program as such and, therefore, any files of that particular time were maintained by the Regional Director's Office.

Q So these letters then in this exhibit apparently are under the custody and control of Mr. Rietze; is that correct?

A If they are in our files I would assume that they would be in Mr. Rietze, the Regional Director's, office.

MR. CRANSTON: I would like to have marked as Defendant's Exhibit "10" a copy of a document entitled, "Conference on Co-ordination of Fisheries Regulations between Canada and the United States, Summary of Proceedings, February 27-28, 1957."

I'll hand a copy of that to counsel for the United States.

(Whereupon above-described document was marked Defendant's Exhibit "10" by the reporter.)

Q Mr. Naab, I'll hand you what has been marked for identification as Defendant's Exhibit "10", and I would refer you to page 7 of this exhibit wherein it states under sub-paragraph 4: "In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in [40] some areas for the measurement of the seaward limits of the 'waters of Alaska' as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible;".

Do you know whether the charts described in Defendant's Exhibit "8-A" to "8-F" are the charts referred to in sub-paragraph 4 on page 7 on Exhibit "10"?

A I don't know.

Q Again, do you know who in this office or who previously served in this office would know?

A I presume it would have to be someone who attended this meeting.

Q That would be Mr. Gharrett and Mr. Baltzo?

A Again, I am not sure. I would presume it would have been Mr. Gharrett, Mr. Baltzo or Mr. Scudder.

Q Or Mr. Scudder?

A Yes.

Q MR. CRANSTON: I would like to have marked as Defendant's Exhibit "11" a document entitled, "Conference on Co-ordination of Fisheries Regulations Between Canada and the United States, Summary of Proceedings, Vancouver, B.C.—April 21-24, 1959", and I will hand a copy of that to Mr. Charney. [41] (Whereupon the above-described document was marked Defendant's Exhibit "11" by the reporter.)

Q Mr. Naab, I'll hand you what has been marked Defendant's Exhibit "11" and refer you to the bottom of page 8 wherein it is stated: "It was Canada's understanding at the Seattle Conference that when the chart showing the definitive line for Alaska had been received and reviewed we would have an opportunity, as outlined in Major Agreement No. 5 of the Seattle Conference, to meet again and propose necessary adjustments of the lines as was the procedure followed at the Seattle Conference in considering the location of the lines in all other areas.

"The chart requested by Canada at the Seattle Conference was received from the United States some eight months after the Conference. The chart was examined and Canada is still of the view that the Alaska line is not definitive."

Do you know whether the charts described in the portion of this exhibit I've just quoted are the charts which form Exhibits "8-A" through "8-F"?

A No, I do not.

Q Do you know if the charts in Exhibits "8-A" through "8-F" are those same charts as discussed by the Under Secretary of State for External Affairs in his letter in Exhibit "9"?

[42] A I would have to look at the letter.

(Above-described document examined by the witness.)

A No, I don't know if these Exhibit "8's" are the same as those charts.

* * * *

Q Does the National Marine Fisheries Service now—you have [43] testified that it is the policy to prohibit fishing for salmon with nets on the high seas; is that correct?

A Yes.

Q Does the area of enforcement of this regulation or prohibition required by that regulation vary in any degree from the line depicted on the charts in Exhibit "8-A" through "8-F"?

A The lines as defined in the regulations that were charged and enforced are subject to various interpretations. One possible interpretation could perhaps duplicate the lines as shown here.

Q Do you know in any particular instance where your current enforcement differs from the baseline and three-mile limit as depicted on these charts?

A No.

Q Then you know of no instance where it differs?

A No.

Q Is the line which is depicted on the charts in Exhibit "8-A" through "8-F" generally the line known as the Gharrett-Scudder line?

A That's what I have heard this referred to, yes.

Q Who has referred to it as this?

A Mr. Scudder, I think, said that he and Mr. Gharrett had prepared it. Again I can't recall specific names, but everybody who had ever seen this line referred to it as the [44] Gharrett-Scudder Line, and I presumed they had a major role in preparing it.

* * * *

[46] MR. CRANSTON: I would like marked as Defendant's Exhibit "13" a memorandum dated September 22, 1969, from Fisheries Management Supervisor, BCF, Juneau, to Chief, Office of International Organizations and Agreements, BCF, Washington, D. C.

(Whereupon the above-described document was marked Defendant's Exhibit "13" by the reporter.)

Q Mr. Naab, I will hand you what has been marked as Defendant's Exhibit "13" and ask you if you recognize this memorandum.

A Yes, I do.

Q At the present time does the National Marine Fisheries Service permit American fishermen to intercept salmon more than three miles from the shoreline of Bristol Bay?

A I would have to consult the Alaska Department of Fish and Game Regulations and look at their fishing district boundaries.

Q By that statement do you imply that the Federal Government [47] or any of its agencies such as the Coast Guard or the National Marine Fisheries Service have no authority over or with respect to the prohibition of the salmon net fisheries on the high seas?

A No. In 1970 the regulations governing offshore salmon fishing, Federal Regulations, were modified so that the areas which were exempted, or in other words the areas in which U.S. nationals could fish, were changed to coincide to those areas in which the State of Alaska allows net fishing. In other words, the Federal boundaries are now tied to the State of Alaska fishing district boundaries.

Q So if the State of Alaska should permit, for instance, a non-resident of the State of Alaska to fish more than three miles from the shore in Bristol Bay then the National Marine Fisheries Service would also permit that?

A Yes, if he was permitted under state regulations.

Q With regard to this last clause in this sentence, "If, as was mentioned during the Seattle meetings, it was

decided to permit U.S. fishermen to intercept salmon out to 12 miles offshore, I believe this regulation," (and you're referring to regulation in 50 C.F.R.) "would be prohibitive and would require revision." Has that regulation then been revised?

A Yes, it was revised last year.

Q And you say it was revised in order to correspond with [48] State of Alaska regulations?

A Yes.

Q Was there any particular wording, if you can remember, in 50 C.F.R.—

MR. CRANSTON: We may as well mark as Exhibit "14" a copy of Part 210 of 50 C.F.R. together with an excerpt from Chapter 36, the April 1971 Regulations, Alaska Department of Fish and Game.

(Whereupon the above described documents were marked Defendant's Exhibit "14" by the reporter.)

Q I'll hand you Exhibit "14" and ask you if you can tell me, if you are able, what the present language of Part 210 is and how it was changed from the existing regulation?

A Well, this is the existing regulation now.

Q How does it differ from what may have been an earlier regulation, if you know?

A The primary difference is in paragraph (b) of 210.1 in which it notes that the exclusive waters adjacent to Alaska shall be those in which salmon net fishing is permitted under State of Alaska regulations. The previous version was there was no such definition of the exclusive waters adjacent to the state.

Q Then the State of Alaska regulations as you understand them use essentially the same description as the exclusive waters of Alaska as sub-paragraph (a), do they not, as [49] extending three miles seaward of the coast, and so on and so forth?

A Yes, I think the definition is almost identical.

Q With regard to Cook Inlet, does the National Marine Fisheries Service permit the taking of salmon with nets in any area of Cook Inlet north of Cape Douglas and west of Point Gore?

A Yes.

Q You state that it does this because the State of Alaska would permit its citizens to do this?

A The State of Alaska regulations allow this net fishery in certain areas of Cook Inlet and because they do, then, of course, it is not a prohibition under Federal Law.

Q In other words, would the State of Alaska Government, for instance, permit non-residents of the State of Alaska to take salmon with nets in any area of Cook Inlet north of Cape Douglas and west of Point Gore?

A You said would the Federal Government allow non-residents?

Q Non-residents of the State of Alaska.

A Yes.

Q In that you state your authority is what? What particular laws or regulations do you rely on?

A Part 210, 50 C.F.R.

Q With regard to other activities of the Alaska Department of Fish and Game in Cook Inlet, do you know whether or not [50] the Alaska Department of Fish and Game manages any fishery resource in Cook Inlet, any part of Cook Inlet north of Cape Douglas and west of Point Gore?

A Yes, I'm sure they do.

Q Are you aware of any particular fishery which is managed?

A Salmon, king crab, possibly shrimp.

Q Are you aware or do you know of any degree or any methods by which the Alaska Department of Fish and Game uses to manage these resources?

A They establish seasons, they establish lawful gear types, probably establish minimum size limit, limits on sex in the case of crabs, open fishing periods, closed fishing areas.

Q Is there a crab fishery that you are aware of in Cook Inlet?

A Yes, there's a crab fishery in Kachemak Bay and possibly also in Kamishak Bay.

Q Is there a crab fishery of which you are aware which exists more than three miles from the shoreline of Cook Inlet?

A From my own knowledge, when I was up there in 1957 to 1959 there was a crab fishery in Kachemak Bay, which would have occurred more than three miles offshore, yes.

Q Do you know at the present time whether the Alaska Department of Fish and Game manages that crab fishery?

A Yes, they do.

Q And you state they do this by placing closed seasons, [51] limits, and so forth on it?

A This is the standard form of management. I'm sure this is what they're doing there also.

Q Do you know whether the Alaska Department of Fish and Game distinguishes between residents and non-residents of Alaska with respect to its management of these fisheries you have just discussed?

A The only thing that occurs to me would be possibly an increased fee for licenses for non-residents.

Q But otherwise do you know whether they would require non-residents to comply with the same restrictions, seasons and bag limits?

A Yes. As residents you mean?

Q Yes.

A Yes, I am sure they do.

Q Have you had correspondence with the Alaska Department of Fish and Game on this, on any areas of management or enforcement of the fisheries in Cook Inlet?

A Nothing specific that I can recall.

Q Does the Alaska Department of Fish and Game send the Juneau Office of National Marine Fisheries Service copies of the annual regulations applicable in Cook Inlet?

A Yes.

Q Are they sent to you?

A Yes, I think they are sent to my office.

[52] Q Do you try to make yourself aware of the content of those regulations?

A Generally not the specifics.

Q In a general way do you make yourself aware of what the Department of Fish and Game is doing with regard to management and enforcement?

A No. We use them primarily for reference in case a question arises, particularly on some of the patrol units if someone asks what the current fishing season is for a certain species in a certain area, we refer to these and we can answer the question. We do not study their enforcement and management techniques closely.

Q But nevertheless you are aware of them?

A Oh, yes, generally.

* * * *

[53] Q I'll hand you what has been marked Defendant's Exhibit "15" and ask if you are at all familiar with the subject matter of these memoranda and letters.

(Above-described exhibits examined by the witness.)

MR. CHARNEY: May I ask where these letters come from?

MR. CRANSTON: These letters came from the files of the Juneau office of the Alaska Department of Fish and Game. I might be able to get further information. Apparently at least one of them came from the United States Government file numbered 886-04. I'm now informed that they were located in the Juneau office of National Marine Fisheries Service.

MR. CHARNEY: I'll make a general objection to these until I have been able to satisfy myself.

A I don't recall seeing any of these documents, offhand.

Q Do you know anything concerning the set of overlays showing baselines defining the waters of Alaska described by John I. Hodges in his memorandum of January 20, 1960?

[54] A No.

Q Do you know anything concerning any maps or charts depicting baselines which were transmitted by the Bureau of Commercial Fisheries to the Alaska Department of Fish and Game?

A No.

Q Have you ever heard of any such maps being transmitted to the Alaska Department of Fish and Game?

A Not that I would know of.

Q I take it then you've never discussed such a transmittal of documents, charts or maps with anyone?

A No.

Q And you've seen no correspondence or any other documents pertaining to such a transmittal?

A Not that I remember, no.

Q Do you know anything relating to the subject matter of these letters set forth in Exhibit "15"?

A No. As I said, this is the first time I recall seeing these documents.

• • • •

Q Mr. Naab, you stated that the regulation involving salmon [55] net fishery in 50 C.F.R. was amended in 1970; is that correct?

A Yes.

Q Prior to 1970 at any time had or has the National Marine Fisheries Service or any of its predecessor agencies prohibited or made any arrests with respect to the use of salmon net gear in any area of Cook Inlet south of the line which is claimed by the Federal Government as the closure line of Cook Inlet?

A None to my knowledge. None while I was in Cook Inlet.

Q Do you know whether or not there was fishing for salmon with nets in any area of Cook Inlet south of the line claimed by the Federal Government as the closure line of Cook Inlet?

A Yes, there was.

Q Was this carried on more than three miles south of that line or south of any shoreline in Cook Inlet?

A Let me look at the chart. Yes, it was more than three miles south of Kalgin Island, south of the closure line.

Q As defined by the Federal Government in this case?

A Yes.

• • • •

[59] MR. CRANSTON: Now the last set of charts which you brought with you. Let's have this document entitled "Territorial Waters and Contiguous Zone Guide, Commander 17th Coast Guard District, Juneau, Alaska", a green booklet with green cover, marked as Defendant's Exhibit "17".

A There is a problem here. These charts and that particular booklet are something I am going to have to retain because we're using it on a day-to-day basis.

MR. CRANSTON: Well, it looks like this booklet, for instance, the green booklet is something that could be capable of Xerox reproduction.

Could we go off the record?

(Off the Record)

MR. CRANSTON: It's been agreed that the Exhibit "17" can be Xerox reproduced here in the office of the National Marine Fisheries Service in Juneau.

(Whereupon above-described document was marked Defendant's Exhibit "17" by the reporter.)

Q I'll hand you Defendant's Exhibit "17" and ask you if this is located in the files of the National Marine Fisheries Service in Juneau.

A Yes, we have several copies of this located in our files.

Q You have brought this pursuant to the Subpoena Duces Tecum?

A Yes.

[60] Q Does this booklet just include the coastline of Alaska or does it include other areas?

A That booklet includes—it is photo reductions of the other charts that are laying here and includes the Alaska coastline from Dixon Entrance to roughly 60 North, or the area in which there is a likelihood of foreign fishing violations of U. S. jurisdiction.

Q By these other charts lying here, you refer to a set of charts prepared on U. S. Coast and Geodetic Survey charts, a group of charts relating to the coastline of Alaska, to the Hawaiian Trust Territories, to—

A The East Coast and the Gulf of Mexico.

Q The East Coast and the Gulf of Mexico. Now with respect to all of these charts, do you know their origin?

A These charts were prepared by an interdepartmental committee composed of members of Federal agencies and were published by the United States within the last few months, and we obtained a copy through our Washington Office.

MR. CRANSTON: Let's just go off the record a minute.

(Off the Record)

MR. CRANSTON: We have here a set of one hundred and fifty-five charts depicting the purported coastline of the United States—

MR. CHARNEY: Objection.

MR. CRANSTON: —each with this wording, "Caution, [60] this document is not for use in navigation. The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. This document does not attempt to delineate International boundaries and is not to be understood as asserting or implying where they are located."

Q Let me ask you this, Mr. Naab: Did this office (by this I refer to the Juneau Office of the National Marine Fisheries Service) participate in any way in the formulation of the baselines or other lines appearing on this chart?

A No, we did not.

Q Were you consulted in any way concerning this?

A No, we were not.

Q Do you know if any agency of N.O.A. participated in the formulation of these charts?

[62] A I understand that National Marine Fisheries Service in our central office in Washington, D. C. had a participant on this interdepartmental committee.

Q Would you know the name of that participant?

A Denny Moore, Denton Moore.

Q Do you know what his title is?

A I think he's the Assistant Chief of the Enforcement and Surveillance Division, something like that, in Washington, D. C.

Q So far as you know he is still—

A He is still in that position in Washington.

* * * *

[64] CROSS EXAMINATION

BY MR. CHARNEY:

Q Mr. Naab, can you tell me whether or not Canadians fishing for any fish are permitted to fish in the territorial sea or inland waters of the United States?

A In the territorial sea or what?

Q Inland waters.

A No, they are not.

Q Do you recall any time during your work here that this was not the case; that is, that they were permitted?

MR. CRANSTON: I would enter an objection for the [65] record at this time, that the examination of the witness in this regard is going beyond the scope of the examination of the witness by the State of Alaska.

MR. CHARNEY: I think this was brought out in the previous deposition and I am just continuing along the lines of the direct there.

MR. CRANSTON: I will still register my objection.

A Prior to 1964 there were no laws or regulations concerning general foreign fishing within the territorial sea that carried penalty provisions. There were customs and regulations against it. However, the only penalty that could be imposed was to direct the ships to leave our waters.

Q Were Canadian vessels permitted to fish in our territorial sea?

A No.
Q How about the Halibut Convention?
A The Halibut Convention allows them to fish in Convention waters, which includes both territorial sea and offshore waters. However, the United States has a law that prohibits all other foreign fishing within the territorial sea.
Q Have you ever made a search of the records of the National Marine Fisheries Service and its prior names, Bureau of [66] Commercial Fisheries and Fish and Wildlife Service in Juneau for any records of enforcement against Canadian halibut vessels in Cook Inlet?
A Yes, I have.
Q When was the first such search?
A I guess in late 1966 or '67.
Q What was the result of that search?
A I could find no record of the apprehension of any Canadian vessels.
Q Or any other enforcement action against Canadians?
A Or any other enforcement.
Q Did you recheck this at any future time?
A Yes, it has been checked again since that time.
Q With any different results?
A With the same results.
Q Do you know if Canadians fish in Cook Inlet?
A We have had reports that the Canadians fish halibut in Cook Inlet.
Q Do your responsibilities or have your responsibilities related to the matter of the location of the limits of the territorial sea in Cook Inlet?
A I'm sorry, I don't understand you.
Q Did anything you had to do, enforcement or any other work, while you have been employed by fisheries offices as they have been variously named have anything to do with the [67] limits of the territorial sea of the United States?
A Only so far as enforcing the prohibition against fishing in the territorial sea.
Q In the course of that work did you have to determine, at least generally, where the limit of the territorial sea was in Cook Inlet?
A Yes.

Q Were you ever given instructions as to where it was?
A We were given the charts prepared by Pearcy in 1963 for guidance for enforcement purposes.
Q Based on this guidance what did you take to be the limit of the territorial sea in Cook Inlet?
A Those charts showed the three-mile limit following the sinuosities of the coast until it reaches a closing line extending roughly across the bottom of Kalgin Island.
Q Referring to those Pearcy charts, do you know if they have been published?
A Not to my knowledge.
Q Have they been shown to foreign governments?
A Not that I know of.
Q Have you received written instructions that they were adopted by the United States as its position?
A No, we have not.
Q Based on the closing lines shown on those charts—let's make sure we know what we're talking about—those have been [68] identified as Exhibits "2" with letters after that, A through—I don't know how far they go. Were they the Pearcy maps?
A Yes, those are the ones.
Q Do you know of any time when enforcement action was taken against any vessel based on territorial jurisdiction where that vessel was located more than three miles from the low water line shown on those charts?
A Based on territorial jurisdiction?
Q Yes.
A No.
Q Do you know of any time when enforcement action was taken against any vessel based on the contiguous zone jurisdiction where the ship was more than twelve nautical miles from the low water line?
A No.
Q Do you know of any time when a U. S. officer told any foreign government, master, or vessel, or other foreign entity that we would enforce our territorial jurisdiction laws measured from the closing lines shown on those maps?
A No.

Q Do you know if the Gharrett-Scudder maps identified as Defendant's Exhibit "8-A" through as far as it goes, were published?

A Not to my knowledge.

[69] Q Were you ever ordered to use them for law enforcement?

A No.

Q Were you ever told they represented the U. S. official position on anything?

A No.

Q Did you ever take any enforcement action based on those lines?

A No.

Q Have you ever arrested Canadian vessels for fishing for halibut in the territorial sea of the United States?

A Yes.

Q More than once?

A Three times.

Q Were any of them in Cook Inlet?

A No.

Q Were any of them more than three miles from the low water line?

A No.

Q We have had a bit of discussion about surf lines and extension lines and other lines, and I would like you to explain what this means, especially with respect to other lines such as the territorial sea lines or inland water lines.

MR. CRANSTON: With regard to his explanation of what the territorial sea line means, this is a legal [70] conclusion and I believe that the law itself is sufficient to define what this means, and that the witness is not competent or qualified to render a legal opinion on the matter of what the territorial sea line is.

MR. CHARNEY: You can answer the question.

A Would you phrase the question once more for me?

Q You've referred to the study with respect to the surf lines, Canadian surf lines, with respect to salmon fisheries. There was a Mr. Moore who did some work on that.

A It was Mr. Scudder mainly.

Q No, the surf lines.

A Morgan.

Q Morgan. We've also had discussion of the Scudder lines. There hasn't been a connection to territorial sea and I'm interested as to why not.

MR. CRANSTON: First let me register my objection. Insofar as the witness is going to testify to the legal significance of the term territorial sea I object on the basis he is not qualified to testify.

MR. CHARNEY: Answer.

A The use of various lines is a very common practice in the fisheries management. The Alaska Department of Fish and Game establishes various fishing districts in which [71] there is a variety of regulations imposed. The United States government and other foreign governments have a number of different lines that are used strictly for fisheries management.

The Halibut Convention, for instance, subdivides the halibut fishing areas in the North Pacific from Oregon through the Bering Sea into a number of regulatory areas, each of which has a slightly different catch quota. The International North Pacific Fisheries Convention establishes a line in the Bering Sea and the North Pacific, east of which the Japanese are not allowed to fish for salmon and halibut. The number of the bilateral agreements with Japan and the Soviet Union establish certain closed areas on the high seas well beyond the United States jurisdiction.

The surf lines that were referred to and the Gharrett-Scudder Line was defined merely to prevent the proliferation of salmon fisheries on the high seas which it was felt would be detrimental to the in-shore management of the salmon industry. The use of surf lines is not necessarily a new technique. In my opinion it is done with no reference to the territorial jurisdiction or continuous fishing under foreign jurisdiction.

Q Are you familiar with American fisheries off Canadian shores?

[72] A Somewhat.

Q Can you tell me about them, as much as you know?

A The extent of Alaskan fishing off Canadian shores is less now than it had been in previous years. At one time there used to be a fairly extensive salmon trolling fishery in Canadian waters, Hecate Strait particularly and then some in Dixon Entrance. There used to be considerable American halibut fishing off Canadian waters and there is a sizeable trawl fishing fleet and salmon fishing fleet that operates out of the states of Washington and possibly Oregon, fishing in Queen Charlotte Sound and west of Vancouver Island.

Q Would these fisheries be affected by claims of jurisdiction of the ocean by Canada?

A Certainly.

Q What would happen?

A If Canada claimed jurisdiction over these waters and there was no provision made for continuation of U. S. fisheries in these waters they would be terminated.

Q How can salmon be commercially caught?

A Do you mean the methods employed?

Q Methods?

A One of the most common, of course, is the use of nets, being drift gill nets, set gill nets, and in some cases sunken gill nets. Traps was another form of gear that has [73] been outlawed in the State, salmon seines, beach seines, purse seines, long line, salmon trawling; all of these have been employed at various places as a commercial fishing operation.

Q I'm turning now to Exhibit "2-H". It's a part of the Pearcy set showing Lower Cook Inlet, and I want to understand how you interpret this. I'm looking at Exhibit "3". On these charts lines have been drawn showing the waters which are internal or territorial waters under present baselines drawn by arcs and circles method following the sinuosities of the coast plus a twenty-three mile closure line for bays. Can you identify verbally the line discussed in that passage as you understand it?

A Well, along certain areas of the coast where there are no indentations there appears a single red line offshore, which is three miles offshore. This would be the territorial sea. In certain other types of indentations there appears two red lines, one farther offshore and one in-

shore across two points of land. This would be a twenty-four mile closure line. The three-mile territorial sea would extend three miles from the closure line and the waters behind the closure line, or inshore from that line, would be internal waters.

Q How about the waters outside of the three miles offshore line?

[74] A The waters outside of the three miles offshore line would be considered international waters.

Q Are there such waters shown on this map?

A Yes, there are.

Q Where are they?

A Down the center of the Inlet water area, if you will, all the way from the top of the map to the bottom.

Q The closing lines of the bays are those closing lines such as Port Graham, Kamishak Bay, Chinitna Bay, and crossing Kamishak Bay at the end?

A Yes, those are in the closed area.

Q This memo goes on, "and 2) the waters which would become territorial waters by application of straight baselines (in addition to the 24-mile closing line for bays) following the criteria set out in the Convention on the Territorial Sea . . ." Could you identify the areas that would be territorial waters by application of the straight baselines?

A The possible straight baselines on this chart are shown by green lines, and extending from the green proposed baseline is a second baseline three miles distant from that, and that would be the additional amount of territorial sea that would be included. In some areas between the green line and the inshore red lines there is a green shaded area, and this is the additional amount of area that would become subject to U. S. jurisdiction if they [75] adopted the proposed straight baseline or the baseline system.

Q I see this green shading, one above and below Augustine Island, and another between the mainland and the Barren Islands. Is that green shaded area the area that would be added to the waters of the United States?

A Yes.

Q Would the center of Cook Inlet all become waters of the United States by the system?

A The areas in Cook Inlet which are not shaded green, which you referred to, would not be added to our jurisdiction under this concept.

Q Would Statistical Area 249 be added?

A No, it would not.

Q Would all of Statistical Area 241 be added?

A No.

Q Would all of Statistical Area 248-70 be added?

A A part of it would be added.

MR. CHARNEY: Let's go off the record.

(Off the Record)

MR. CHARNEY: Could you mark this?

(Whereupon document titled "210.1, Title 50—Chapter II, Subchapter B—North Pacific Commercial Fisheries" was marked Plaintiff's Exhibit "1" by the reporter.)

Q Mr. Naab, I show you documents marked Plaintiff's Exhibit "1". [76] Would you identify them?

A Yes. This is a copy of Part 210 of 50 C.F.R., the regulations as they existed before 1970 concerning high sea salmon net fishing, and a copy of the same part of C.F.R. showing the current regulation as it was changed in 1970.

Q Am I correct, that the description prior to 1970 is on top, the first page?

A Yes, the first page is prior to 1970.

Q And the second page is subsequent to 1970?

A Yes.

Q Were you responsible for enforcing the regulations based on this definition at any time?

A Yes.

Q I notice that definition attempted to define an area; is that correct?

A Yes.

Q As you have understood your instructions did that area, the division of one area from another, coincide with the division of the territorial sea from high sea?

MR. CRANSTON: I object at this point. We have referred to instructions and I do not know that there is any testimony on the record concerning any instructions given the witness concerning this regulation.

Q Would you tell me your understanding of this and compare [77] it to your understanding of the territorial sea as you were advised.

MR. CRANSTON: I still object on the basis there is no foundation for any advice.

Q Tell me whatever advice you had.

A We, of course, had asked for guidance from our Washington office as to what constitutes waters adjacent to Alaska as defined in this regulation and we received no firm guidelines. We were told to interpret this as it was written and, of course, it outlines these waters as being those which are three miles seaward from the coast, from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances, and from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such islands and the mainland. Of course, in looking at this as opposed to the methods which Mr. Pearcy advocated for determining the territorial sea, it was obvious to us this definition was not the same as the territorial sea.

Q Did you interpret it then as something different?

A Yes, as the waters adjacent to Alaska as defined.

Q Do the regulations under this definition apply to persons other than citizens of the United States?

A No.

Q What do the regulations provide?

[78] A That persons or vessels subject to the United States jurisdiction shall not fish for salmon in the North Pacific area outside this area defined as waters adjacent to Alaska.

Q Does it place any restrictions or limitations on what is done inside this area?

A No, it doesn't.

Q Assuming that the line described in this definition is more seaward than the limits of the territorial sea of the United States, do the regulations place any limitation on salmon fishing by Americans in those areas?

A If the waters as defined by this were more seaward of the territorial sea they would still be allowed to fish salmon in that area.

Q Do you know if the United States has ever adopted a system of straight base lines on the coast of Alaska?

A Not to my knowledge.

Q Have you ever received any instructions stating that any body of water on the coast of Alaska was claimed by the United States as historic, inland or territorial waters?

A No.

Q Now turn to the second page of this Plaintiff's Exhibit "1" to this deposition. Do you know anything about this change in the regulations?

A Yes. This change came about primarily at the recommendation of the Alaska Region of N.M.F.S. and also the Alaska [79] Department of Fish and Game.

Q Would you explain?

A The 1970 red salmon run into Bristol Bay was anticipated to be extremely large and there was concern that perhaps the processing facilities located in Bristol Bay would be inadequate to handle the amount of anticipated catches if they were caught in the normal time span; in other words, within a relatively short time. Because of this the State of Alaska wanted to create some additional fishing districts in the lower reaches of the river mouths so that our fishermen would have a longer opportunity to catch these fish. In other words, they could go out into a further area and get a few more days' lead time before the run came in and get them to the cannery earlier.

We looked at this and under our previous definition of waters adjacent to Alaska it appeared to us in view of the relatively flat coast in Bristol Bay that these outer fishing districts would be outside the waters adjacent to Alaska and if the United States or the State of Alaska allowed fishing in there it would be in violation of the North Pacific Fishery Regulations. So at our recommendation the regulations were changed to tie the waters adjacent to Alaska as defined in the Federal Regulations to those districts in which the state allowed fishing in order

to let the Bristol Bay fishermen fish in these outer fishing [80] districts in 1970.

Q What was the location of some of these artificial districts?

A In some cases they were located more than twelve miles offshore.

Q How does Alaska, as far as you know, enforce these regulatory areas, or does it?

A Yes, it does. It uses aircraft patrols and vessel patrols in some areas.

Q Does it seize foreign vessels in these areas?

A It has never to my knowledge.

Q Does it use landing laws or other kinds of laws for enforcing them?

A Well, it does use landing laws plus other types of laws too.

Q Mr. Cranston asked you a question with respect to Exhibit "8"; that's the Scudder maps. The question involved enforcement, whether you had enforced inside the lines or outside the lines. Do you recall that question?

A Yes.

Q Do you recall it anymore than I do? Would you explain to me your answer?

A I recall the question. I interpreted the question as being were there areas in which the United States allowed salmon net fishing offshore; were they all inside the Scudder-Gharrett Line, and my answer was, as I recall it, [81] yes, they were all inside that line.

Q Is your answer necessarily the contraposite of that; that is, that the prohibitions on certain types of salmon fisheries are all applicable outside of that line?

A Yes. Outside of that line the prohibitions would be applicable.

Q Is there any place inside that line where the prohibitions are applicable?

A Yes, there are areas inside that line where it is also prohibited.

Q So the line on those maps, Exhibit "8", is not the dividing line?

A No, that line has no relationship to where we feel they do not enforce salmon net fishing.

Q I think in answering that question you spoke of boundary lines. What do you mean by that?

A Boundary lines?

Q I think I remember that term. No, as a matter of fact it was with respect to the Alaska fisheries.

A Fishing district boundary lines?

Q Yes. What do you mean by boundary lines in that sense?

A They establish in most of the fishing districts, at least in Bristol Bay area. Each river system, its lower part and tributaries divided into a number of fishing districts, has certain restrictions on fishing time and perhaps on catch [82] quotas. These are merely regulatory divisions of the fishing areas to control the fisheries.

Q Mr. Cranston showed you Deposition Exhibit "12" referring to the Coast Guard maps that you saw.

A Yes.

Q You said the maps showed a three-mile limit in Cook Inlet.

A Yes, it did.

Q Did it follow the sinuosities of the coast up the Inlet to Kalgin Island to measure the three-mile limit or was the three-mile limit measured from a closing line below or at Cape Elizabeth or Cape Douglas?

A The three-mile limit followed the sinuosities of the coast up to the same identical closing line as North Kalgin Island.

Q Does the National Marine Fisheries Service office in Juneau and what it was prior to being called that, B.C.F. and all other names, do you know if it has been given authority to determine the limits of the territorial sea of the United States for Alaska?

A No.

Q Or conduct the foreign relations of the United States with respect to the limits of the sovereignty of the United States?

A No.

Q If you said that someone in this office, talking about the [83] Regional Office, maintained the territorial sea of the United States was some place off the coast of Alaska, is that subject to your review?

A I don't understand the question.

Q If you arrested a foreign vessel off of Alaska and the question arose as to whether it was or was not within the territorial sea of the United States or the contiguous zone, who would have the final word, this office here or the main office in Washington, the State Department?

A When we get what appears to be a violation of the territorial sea we, of course, are guided by the charts now provided by the Interdepartmental Committee. But in addition, the distance offshore in a precise position is relayed by the Coast Guard to their Headquarters in Washington, D. C. and I'm confident that if they had reason to believe this was not within the territorial sea (by "they" I mean Coast Guard Headquarters in Washington, D. C. and whoever else they consult) that we would be instructed not to seize this foreign vessel.

Q How long has this been in effect?

A Ever since I've been here; for ten years.

MR. CHARNEY: We can go off the record.

(OFF THE RECORD)

MR. CHARNEY: We have stipulated and I'll give Alaska the right if they want to come in with affirmative [84] evidence at any time that this stipulation is wrong, they have the right, but to the extent that we have sustained the burden of proof, that the maps that were referred to by Mr. Cranston as containing one hundred and fifty-five maps and with a statement on it beginning, "Caution, This Document is not for use in Navigation. The lines drawn on this document delimit provisionally . . ." and so forth. Contained within these 155 maps in the custody of the National Marine Fisheries Service in Juneau is one document of Cook Inlet based on Chart 8553, Eleventh Edition, January 17, 1970, corrected through Notice to Mariners 3/70, showing the northern part of Cook Inlet and around Kalgin Island; and another page based on Chart 8554, Eleventh Edition, April 18, 1970, corrected through Notice to Mariners 16/70 showing Lower Cook Inlet with a coastline, a three-mile line and a twelve-mile line shown on it.

We have stipulated that these two documents are the same as the documents contained in United States Exhibit "73" that was submitted to the State and filed in the Court about a week or two ago. Is that correct, Mr. Cranston?

MR. CRANSTON: It is my understanding, yes, that [85] these are the same; Exhibit "73" and the two maps to which you referrerd are the same.

Q Mr. Naab, these 155 maps, do you know if they are for sale?

A Yes, they are.

Q Published?

A Yes.

Q Where can they be purchased?

A National Ocean Survey, Washington, D. C.

Q Let's look at Defendant's Exhibit "17", which is that green book entitled, "Territorial Waters and Contiguous Zone Guide, Commander, Seventeenth Coast Guard District, Juneau, Alaska". I show you page thirteen. Could you tell me what this is?

A That's a photo reduction of the chart of the Southern Part of Cook Inlet which you previously referred to.

Q This is a reduction of the chart contained in the set of 155 maps that we have been discussing and stipulated concerning?

A Yes. That is a photo reduction of the same maps.

* * * *

[87] Q This Exhibit "17", who has copies of it?

A This was produced by the Seventeenth Coast Guard District. We were given a few copies for use by our enforcement agents. The rest of them have been distributed to the Coast Guard fisheries patrol units for their guidance and enforcement.

Q Patrol units; does that mean ships?

A Ships and aircraft.

Q Every ship and aircraft in the Seventeenth Coast Guard District has one of these?

A Every one on fisheries patrol, yes.

Q Prior to this issuance do you know of any other maps that were given as distribution?

[88] A I know of no such maps indicating either territorial sea or contiguous zone.

Q Aside from these exhibits, "17" and the set of 155 maps, let's talk about all of the other maps which have been produced by the State showing lines off of Alaska. In enforcement activities do you know if any of them were shown to foreign vessels?

A No, none of them were shown to any foreign nationals concerning fisheries. As you know, some of the surf lines and the Scudder-Gharrett lines may have been shown to the Canadian officials.

Q Now let's turn to deposition Exhibit "17". Do you know if that was ever shown in the course of enforcement activities?

A Yes, I am sure it was.

Q Can you name an incident?

A A few weeks ago a U. S. halibut boat reported a Canadian halibut vessel fishing in Lower Chatham Strait inside what the U. S. fisherman took to be a closure line across Lower Chatham Strait, in which case the Canadian would have been inside U. S. territorial waters. The Coast Guard launched an aircraft to investigate and a Coast Guard Cutter with one of our enforcement agents aboard responded. They found the Canadian fishing vessel in Lower Chatham Strait fishing well outside three miles but [89] inside twelve miles, and based upon the documents that you've referred to they boarded the Canadian vessel and pointed out to him the limits of U. S. jurisdiction as depicted in those two documents. They also boarded the U. S. vessel and pointed out to him the limits of jurisdiction in Lower Chatham Strait.

Q This deposition Exhibit "17" contains a number of maps. Are each of them copies, at a reduced scale, of whatever appropriate larger scale map is shown in the set of 155 that's published by the U. S. Coast and Geodetic Survey?

A Yes, they're all photo reductions of some of those 155 charts.

* * * *

Q Do you know anything about the Coast Guard enforcement of laws in Cook Inlet based on the limits of the territorial [90] sea?

A Well, I know that the Coast Guard, which we conduct joint fisheries patrols with, are guided by the same lines and limits that we follow.

Q You're on the ships with them?

A Yes.

* * * *

REDIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

[95] Q You have testified concerning what constitutes waters adjacent to Alaska, particularly as that term is used in 50 C.F.R., part 210. I believe that you testified that you were told to interpret this section as it was written; is that correct?

A Yes.

[96] Q Do you have any memorandum or other written document or instruction of any kind indicating that this section in its definition of the waters of Alaska is to be interpreted or treated differently than the definition of the territorial sea of Alaska?

A No, not to my knowledge.

Q Have you had any conversation or any oral instruction from anyone superior to you telling you that this section is to be interpreted differently from the interpretation you would give to the territorial sea of Alaska?

A I have discussed this point, probably in the early '60's, with our Regional Solicitor, legal advisor, Department of Interior in Anchorage, and I had interpreted the section myself and through my supervisor, Mr. Rietze, in my interpretation, and the Regional Solicitor concurred with me that this definition was different than what we had construed to be the definition of the territorial sea.

* * * *

[97] Q Is that three-mile concept generally a concept, in your opinion, which is inherent and applicable to the concept of the territorial sea?

A Yes.

Q Do you know of any other instances where that concept is applied?

A The three-mile territorial sea?

Q Of a three-mile limit measured from something?

A Do you mean as a measurement of something other than the territorial sea?

Q Yes.

A The adjacent waters of Alaska is another use of a three-mile limit.

Q What would the significance of a three-mile measurement with respect to waters of Alaska—how would that differ in significance, or necessity or need from the concept [98] of a three-mile limit measuring the territorial sea?

A For instance, if you use the concept of the three-mile measurement as defined under waters of Alaska it would seem to imply that Shelikof Strait would be included in waters adjacent to Alaska. All of the Alexander Archipelago would be included as waters adjacent to Alaska. If you really wanted to stretch the definition, the waters between any offshore island and the mainland would be waters adjacent to Alaska. Cheericoff Island sits perhaps sixty miles offshore. All the waters between it and the Alaska Peninsula would be waters of Alaska, the waters adjacent to it. Under that liberal interpretation of this thing I certainly would never believe this was the same definition as the territorial sea.

Q What in this definition of the waters adjacent to Alaska which uses the term "three miles seaward from the coast, from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances and from any island or groups of islands," what is there necessarily about the three-mile term itself that would include Shelikof Strait within that definition?

A If you categorize Shelikof Strait as including all straits and not just passages.

Q All right, but that is the word "strait". Is there anything which the use of the term three-miles seaward adds [99] to that definition so far as it applies to the

waters of Alaska other than three miles itself as a geographic fact?

A I'm not sure I understand what you're trying to get from me.

Q In other words, do we need the three-mile addition in this definition in order to make Shelikof Strait part of the waters of Alaska as you would interpret this?

A No.

Q So my question is, what significance does the three-mile definition as it applies to the waters of Alaska add?

A It would add a three-mile belt on the outside of the offshore islands and on the outside of the line between headland and headland, and on the outside of the waters of the Alexander Archipelago.

Q Does not a three-mile limit of territorial sea also add three miles to islands even if they are offshore islands?

A Yes, but it does not necessarily include the waters between those islands and the mainland, as that definition could.

Q I'm trying to point out that that part of the definition arises from the fact that it includes headland to headland across all bays, inlets and passes, and does not depend on the existence of adding three miles.

A No.

* * * *

[101] Q Do you have a copy of Part 210 in front of you?

A Yes.

Q With respect to enforcement of this regulation and specifically with regard to activities of salmon net fishing within Cook Inlet, where does the National Marine Fisheries Service consider the line within Cook Inlet where, under this regulation, net fishing would be permitted?

A It would be within the same jurisdictions in which the State of Alaska currently allows salmon net fishing.

Q First of all, which one of the tests would you apply, or are applied with regard to Cook Inlet? In other words, does the National Marine Fisheries Service consider that the line is drawn three miles seaward from the coast or

as set forth in sub-paragraph (1), or within three miles [102] seaward from lines extending from headland to headland across the inlets?

A I think in this particular case we would use paragraph (b), stating that the waters in which the State allows net fishing are included as those accepted waters.

Q Generally, where in Cook Inlet are those waters?

A Unless the regulations have been changed recently, drift gill netting, for instance, is allowed roughly from the latitude of the Forelands down to roughly the latitude of Anchor Point.

Q Where is seining permitted?

A Seining is permitted—I would have to go to the regulations to find out the districts—but generally it's further down the Inlet along the inshore areas both on the west and east sides.

Q Is it limited to within areas three miles from shore?

A I would doubt that it reads that way.

* * * *

[103] RECROSS EXAMINATION

BY MR. CHARNEY:

* * * *

Q Were you ever instructed that 50 C.F.R. 210 in the present or past form describes the territorial sea of the United States?

A No.

Q Have foreign vessels fished within the waters adjacent to Alaska as defined in those provisions as you would [104] variously interpret it?

A It would depend on who is interpreting that particular definition. Certainly if you use some extremely liberal headland to headland concept on between islands and the mainland, it is conceivable that foreign vessels have been in that area.

Q Have they fished in Shelikof Strait?

A Yes.

Q Did you study the documents relating to the Scudder-Gharrett Line that you handed to Mr. Cranston today?

A Yes, I've been through them.

Q Your opinions as to their not being necessarily territorial sea lines or interpretations of what the proposed territorial sea could be, can you find any support for that in any of these documents?

A Yes. There were some statements in the correspondence relating to those lines that said that they were not intended to affect the territorial sea.

Q Can you point to that?

A In Defendant's Exhibit "9", the June 11, 1957, memorandum to the Director of the Bureau of Commercial Fisheries from the Acting Administrator, Alaska Commercial Fisheries, Juneau, item (1) under the first paragraph on the first page says: "They do not represent the outer limits of territorial waters but are only the base from which outer [105] limits are determined."

Q Point to number five. Would you read that?

A Number five says: "In drawing base lines, interpretation of international waters was not a primary concern."

* * * *

REDIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

Q Have you in the set of 155 documents considered the words, "The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States", and have you also considered [106] the words, "This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located"? Do you regard these 155 documents as provisional?

A I regard them as being the current United States policy which, of course, is always subject to change. If

a different policy on the part of the United States should be adopted, undoubtedly, these lines would be changed.

* * * *

[3] THOMAS M. ODALE, called as a witness by and on behalf of the Defendant herein. pursuant to the Provisions of the Code of Civil Procedure of the State of California, after being first duly sworn by the Notary Public to testify to the truth, the whole truth and nothing but the truth, deposed and testified as follows:

EXAMINATION UNDER THE STATUTES

BY MR. CRANSTON:

Q Mr. Odale, would you state your name, please.

A Thomas M. Odale.

Q And you live here in Yucca Valley, California; is that right?

A Yes.

Q Do you have a post office box?

A Yes, 77.

Q Post Office Box 77, Yucca Valley?

A Yes.

Q In all of these depositions, we have to get the age of the person that we are talking to. Can you tell me how old you are?

A Either 89 or 90. They ain't sure. During World War I I wanted to take one of those sub chasers, and I was one year too old, so I set it back a year. They get me on that every time.

Q Now, did you ever live in the Cook Inlet area of Alaska?

A I did.

[4] Q Can you tell me the year that you first went up to Cook Inlet?

A I think the spring of 1901 or 1902.

Q And what did you do up there then?

A I prospected for a couple of years. My brother, he went there in '95, built the first place where Sunrise is.

Q Your brother built the first place in Sunrise?

A Yes.

Q Is that the one that's on Turnagain Arm?
A Yes.
Q What part of the country did you work in in 1901?
A I was prospecting all of the upper Turnagain Arm and some of the Knik Arm and over to Skilak Lake, down through the Coal Creek—
Q This is the one near Kenai, Coal Creek near Kenai?
A Yes. Down the Kenai, Coal—
Q After you prospected up there, what did you do?
A I went to contracting for the railroad. They were building out of Seward. I started in making ties just about 16 or 18 miles out.
Q Out of Seward?
A Yes, and the moved up to 31 miles just across from Moose Pass, and I was there contracting for almost two years.
Q Do you have any idea what year this would have been?
A Well, yes.
Q You don't have to be exact.
A I set them down the other day, 1932, '33, and '34. I'd [5] estimate '33 and '34 for the railroad.

* * * *

[7] A I went to work, come out from the interior and went up into Nugget Gulch and worked there that summer. Then I come down and went on this—started to run or learn to run it.
Q Was this just a couple years after the San Francisco Earthquake, as best as you can remember?
A Yes. The 'Frisco Earthquake—you know, I helped put in that big hydraulic plant for the 'Frisco people. They kept me on the trail to Seward two-thirds of the summer. That big hydraulic plant in Coal Creek—
Q Where did you run this boat on Cook Inlet?
A Well, that fall we just run passengers up and down. Then we'd pull her out for the winter.
Q Do you remember the places that you ran on the Inlet?
A Yes, from Seldovia up to—miners going up into the stampede in Cache Creek and Nugget Gulch, those places.

Q Where were Cache Creek and Nugget Gulch? What part of the inlet were they in?
A They are up on the Yentna, a branch of the Susitna. You go up the railroad. There's a road runs out there now. What is the first station up there where people go up there fishing so much?
Q You are talking about the Susitna?
A The railroad out of Anchorage. They have a road from there over to the Cache Creek country.
Q I see. Now, when you traveled—when you used the boat [8] on the inlet, do you recall how far offshore you traveled on the boat? Where would you run your boat, between Anchorage and Seldovia?
A Well, that fall was just between Anchorage—running up the Inlet to Tyonek and places like that where they could get a boat and go up the river.
Q When you'd run between Cache Creek and Seldovia, what part of the Inlet would you travel on?
A Travel right up the Inlet from the center and by Seldovia right up the Susitna, or to Tyonek, rather, and Knik a lot.
Q After you ran this gas boat on Cook Inlet, did you do any work at all for the United States Government?
A Not at that time. I did later on.
Q What was that, later on?
A Well, when I went to work for the Government, was what you call working for the Government. I had a mail contract in between.
Q Tell me about your mail contract?
A Well, that comes on this boat. Laid up the boat that fall, that was the first gas boat at the time. Laid it up for repairs for winter, and we fixed it up and then went to work—Jim Ward and I—and we worked around there and started—the Alaska Commercial Company come in there and started on account of the Cache Creek boom.
Q Now, getting back to your mail contract, can you tell me—
A I am coming to that. In the next year, Watson got a [9] contract to finish the railroad down to Kern Creek from Rainbow, the grading. We bought this boat in the fall, and before we contracted with them in the spring,

we worked there all summer, towed the lumber up 63 miles in all around there when they was building the railroad; they got down 63 or 71 miles that year, that they graded on down the Rainbow. During that time the A. C. Company was putting out—getting bids for carrying mail on Cook's Inlet.

That's Seldovia to Homer, Kenai, Kasilof, Tyonek, Knik, and Sunrise—a round trip so I run up there—and my partner and I went over it cross-country to Seward and put in the bid on that mail contract to carry along Cook's Inlet four years, and I was awarded the contract. Brown and Hawkins wanted the bonds on it for me.

Q Did you have to meet any requirements—have to have anything to get the mail contract?

A No. I had one that carried inland waters, all of it.

Q Did you have a license of any kind?

A I got the license that year.

Q What was the license for?

A Well, carrying passengers on inland waters of the United States.

MR. BRADLEY: Object to that last line of question as being leading.

Q (BY MR. CRANSTON) I'd like to have marked as Defendant's Deposition Exhibit 1, Chart 8502, U.S. Coast and Geodetic Survey, Sixteenth Edition, July 4, 1970, [10] corrected through Notice to Mariners, 27/70.

Mr. Odale, I am going to hand you a chart here and ask you to look on it. Is this a chart of the area over which you carried your mail contract from Seldovia? Would you indicate by references to landmarks on the chart where you ran your mail boat?

A Yes. I am just going to tell you that the Cordova postmaster had a little tune on that. He says, "Seldovia and Homer, don't keep a Kenai on Knik and Tyonek. They will have a tough—make it hard for Sunrise and Hope." Those are the cities.

Q Could you indicate with a line, if I give you a pencil, could you indicate—could you draw a line on this map the route that you followed exactly where you had run your boat in the Inlet? Try to indicate as best you can the route that you'd follow when you ran your boat in the Inlet.

A We went by way of Palmer here. I forgot to put that on. We just happened to be in the line. There's only two people there. Goes on up to Ninilchuk. We did deliver there where they had to—I don't know. And Kenai, here's where the refinery is now. Then we went across Tyonek right here close to there. Then later on they put it up the Beluga, had to go up the Beluga River, but then we went across the Knik.

Q Could you just continue with the line?

A Tyonek and Knik was included; Beluga later. Beluga River postmaster moved up there. Then we come out and [11] we goes across up to Knik on the shore. Then we come around here and we went up Sunrise and Hope, Resurrection. Then we come out, go up to Sunrise, then back the same route. Had to make the round trip. I should have laid that down on the table and got over there.

Q Now, when you traveled with your boat, about how far offshore did you run?

A Just according to where we had a passenger to dump off or something else. We were allowed to go anyplace and deliver in Cook's Inlet.

Q Did you ever travel on the west side of the Inlet?

A Lots of times.

Q With your mail boat?

A No, only the times we was over at Tyonek.

Q Generally, and if you can't answer, just say so, when you were going up the Inlet from Seldovia north to Kenai and the Tyonek area, would you travel more or less than three miles from the shore line?

MR. BRADLEY: Object.

THE WITNESS: Oh, we'd travel sometimes real close and sometimes we was out. Of course, if it was night, we'd go right down the Inlet and take the rim because it's rocky for miles out.

Q (BY MR. CRANSTON) You'd go right out the Inlet and do what?

A Go right out and run by compass until we got opposite.

Q About how far?

A In the daytime if it was nice and calm we run pretty [12] close to shore.

Q By "way out in the Inlet," where are you talking about with respect to the middle, would you say?

A Yes.

Q You mean the middle—

MR. BRADLEY: Objected to. It's a leading question.

THE WITNESS: You get the best tides in the middle, yes.

Q (BY MR. CRANSTON) And was this helpful for running the boat at times?

A Oh, absolutely.

Q Now, coming down—

A I will just explain that.

MR. BRADLEY: Objected to as a leading question.

THE WITNESS: You leave Anchorage where it is now. For instance, when we'd come down, we'd have to wait here.

Q (BY MR. CRANSTON) By "here," you are pointing to East Foreland?

A We'd have to wait above that until after high water because we couldn't buck the tide around the point, and then we go down with tide down below to the slacker tide, and it would run longer out in the center than it does along the shore.

Q Do you know about what dates that you had this mail contract—the years? Can you remember what years that would have been?

MR. BRADLEY: Same objection made b * * * [13] written recollection.

THE WITNESS: Just explain things. It was only a 34-foot boat, low shallow draft boat, so we started in building a big boat that winter, and we got ready for part of the summer a 100-ton for the Inlet there. We built that in Seldovia.

Q (BY MR. CRANSTON) Can you remember the year?

A From 1910—

Q You had the mail contract?

A Started carrying—

Q In 1910?

A Yes.

Q And for how many years?

A Either 1909 or 10. Anyway, I had a four years signed contract, and the Cache Creek went broke and closed down. The A. C. Company quit, and so I quit, moved on Anchor Point in 1912.

Q All right. After the mail contract, what did you next do on Cook Inlet?

A I put a fish trap on Anchor Point there, and the darned summer the Katmai Earthquake—it killed all my salmon, took out all the traps.

Q After you had the mail contract, did you do any work which involved the United States Government?

A Not during the mail contract.

Q No, afterwards. What was that, the next thing you did involving the United States Government?

A The next work was for the railroad. In 1915 I was [14] running the Alaska for them all summer.

Q What was the next thing you did on Cook Inlet involving the Government?

A I will give you this list right here. Now, the gas boat, the railroad there, and the fisheries. You know the fisheries and the Game Commission never did get along together.

MR. CRANSTON: I'd like to have this letter dated March 16, 1954, and another letter dated January 12, 1954, marked as Defendant's Deposition Exhibit 2.

MR. BRADLEY: The United States does not waive any objections to which it might have to the exhibit at trial.

Q (BY MR. CRANSTON) Now, Mr. Odale, I am referring to a letter from the United States Department of the Interior from the United States Fish and Wildlife Service dated July 12, 1954, and it refers to the fact that in 1933 you were a temporary assistant?

A Yes, that's what he put as skipper of the boat for the summer.

Q And according to this letter, you worked from 1933 through 1943 with the Fish and Wildlife Service?

A That's right, off and on, most of the time.

MR. BRADLEY: Object to this as a leading question.

Q (BY MR. CRANSTON) Now, could you tell me generally what type of work you did from 1933 through 1943 with the Fish and Wildlife Service, first of all?

A No. I can't tell you all of them, probably.

[15] Q Could you tell me where you were stationed during these years?

A I was stationed at Anchorage, and I had a homestead down on the Tustumena Lake throughout the winter. I'd go down there if I wasn't keeping busy.

August 20, July 17, November 22nd—that was all up—

MR. BRADLEY: Mr. Odale is reading from the list which Mr. Cranston handed him.

Q (BY MR. CRANSTON) Did you ever engage in any patrol activities with Captain Cole?

A Yes. Captain Cole—I helped—I went down the Kenai and helped put up the buildings there during the winter, the Government building for the Fish and Wildlife.

Q Concerning Captain Cole, where did you patrol with him on Cook Inlet?

MR. BRADLEY: I object. He testified that he didn't patrol with Captain Cole in Cook Inlet.

THE WITNESS: He was on the same boat I was on. I had the till. He went off on some other boat. They sent in the fish inspector from Washington the first year.

Q (BY MR. CRANSTON) Can you tell me—first of all, just answer is one question. Did you ever patrol on Cook Inlet for the Fish and Wildlife Service?

A (No audible response.)

Q Where did you patrol?

A Everywhere, every port and bay.

[16] Q Did you ever patrol more than three miles from the shore line of Cook Inlet?

A Yes.

Q Now, what was the purpose of your patrols on Cook Inlet?

A It was to watch out for drift nets, purse seines and too near the entrance to rivers.

If you want me to explain something about that, before Captain Cole come in there, they had five and six and seven traps like in the Kenai River, and the fish were almost extinct. They was catching them all, and he set a limit for the distance, and we had to watch all those places, keep them out of the rivers, tidal water, and all.

Q Were there any boats fishing in Cook Inlet when you were there?

A What?

Q Any fishing boats in Cook Inlet?

A Oh, yes. There were cannery boats and then there was lots of independent fishermen.

Q Could you, with reference to his [*sic*] chart here, Exhibit 1, indicate where the boats fished in Cook Inlet?

A They fished over there some.

Q You pointed to Uyak Bay?

A I'm getting down to Kamishak. That's in Cook's Inlet. That's fartherest west in Cook's Inlet, but we went clear around this portion of the bay.

Q Did the boats fish more than three miles from the shore line in Cook Inlet?

[17] A They could, yes; but they weren't supposed to.

Q I see. And who—let me ask you this question. Who wouldn't let them fish more than three miles from Cook Inlet?

A Oh, there was a lot of them—beach fishing, so forth.

Q But could you explain your answer, "They weren't supposed to fish more than three miles from shore"? What do you mean by that?

A I didn't say that they weren't supposed to. I said they weren't supposed to use purse seines.

Q More than three miles from shore?

A They wasn't allowed to use them at all.

MR. BRADLEY: That's a leading question.

THE WITNESS: A purse seine is almost a mile long, and it's 150 deep. They surrounded and then purse them in. They get tons of fish in one purse.

Q (BY MR. CRANSTON) Now, when you say that they weren't supposed to use purse seines in Cook Inlet, in what part of Cook Inlet could they not use purse seines?

A They couldn't use them on any part at that time when I was with them.

Q Could they use a purse seine in any waters north of the Barren Islands?

A They might have, but I don't know of any of it. They couldn't use them at that time.

Q North of the Barren Islands?

A No, not even around Kodiak.

Q Now, in other words, who told them they couldn't do this?

[18] A Well, that was—I don't know just how far that would reach because the salmon again bunch up when they get in about three to five miles out, and they begin to pack in, bunch, and you can surround them and get several days' pack out of one purse.

For instance, Portlock—I was in there with a small boat part of the time after they made these rules, and I'd go out there to wait a big boat one day. They had a couple of nets set out, but they had about a mile and a half, two miles of purse seine which they wasn't supposed to have aboard. I made them take them to Kodiak and unload it on the Fish-Wildlife dock. They took it away from them.

Q Did you concern yourself with purse seines when you were patrolling Cook Inlet? Did you look for purse seines?

A Oh, we always watch for them because they are one of the most destructive things there is.

Q Did you know any of the fishermen who worked in the Cook Inlet area?

A What was that?

Q Did you know any of the individual fishermen who worked in the Cook Inlet area?

A Yes, I did. I knew most of them; most of them are dead now. They lived ashore and just used beach seines, beach nets.

Q If I asked you to give an estimate of the number of fishermen that you might have known on Cook Inlet, could you give me any figure that would estimate that?

[19] A Lord, that's hard to tell because there was

fishermen with the traps, you know, and lots of them stayed up there. There was 200 or 300, 400.

Q What was the belief or the reputation among the fishermen—

MR. BRADLEY: Object.

Q (BY MR. CRANSTON) —if you can answer this, concerning whether or not Cook Inlet belonged to the United States?

A Well, I supose we always had that understanding—that it did. Everybody understood that. I knew that boat—

Q When you are talking about the reputation that it did belong to the United States, could you indicate by reference to this chart which is Exhibit 1, what part of Cook Inlet you are talking about that belonged to the United States?

A Well, the whole Inlet.

Q You placed your hand—

A We patrolled the whole Inlet.

Q You placed your hand down around Cape Douglas. Is this what you are talking about from Cape Douglas up the Inlet?

A Well, the whole Inlet. This is all in the Inlet clear out to Kodiak, the way I understand it. The Barren Islands across here—

Q Across here you ran your finger to the northern tip of Shuyak Island, the Kodiak Island group?

A (No audible response.)

[20] Q And this was the part—did it matter whether or not it was—as you are talking about—a particular distance from the shore line, if it was part of the United States?

A No. We never understood that. We understood it was their waters, and we were to keep it clear of—increase the salmon.

Q Now, so you are talking about all the water in Cook Inlet?

MR. BRADLEY: Object.

THE WITNESS: Huh?

Q (BY MR. CRANSTON) You are talking about all the waters of Cook Inlet?

A Yes.
Q Did you ever see any foreign fishing vessels in Cook Inlet?
A Oh, there was other vessels, yes, coming in more all the time.
Q Were there foreign countries, say, Canadians or Japanese?
A There was no foreign country boats while I was working for the Fish and Game Commission.
Q Did you ever see any foreign fishing boats when you were running your mail boat in Cook Inlet?
A No.
Q Or your gas boat back around 1901, or around that time?
A No. We never had any foreign boats in there at that time. But there was a foreign boat come in. It was a [21] freighter or a passenger boat or something which they had a license to do.
Q Did you ever see any foreign fishing boats?
A No.
MR. CRANSTON: I have no further questions.

EXAMINATION

BY MR. BRADLEY:

* * * *

[22] Q Did you get this understanding from the license that you received?
A Not altogether, but everybody had that understanding. It was nothing—
Q Partially from the license?
A Well, a good deal, but now you take your coast pilot. You see, where they make charts for it, way out to sea—
Q Could you indicate how far out you thought by reputation was inland waters on the chart? Would you show us? How far out into the sea was inland waters?
A Well, it was from point to point, the way we understood it.
Q Could you draw a line across there for us?

A From three miles off the point on Kodiak out to three miles off this and three miles off that. I know the line ran from Bering Sea right straight almost to the end of the Aleutians.
Q Was this a line you saw on the map?
[23] A Huh?
Q Was this a line you saw on the map?
A It's on the coast pilot.
Q It's on the coast pilot now?
A They have that understanding with Russia.

* * * *

[2] SVRRE OMSUND, called as a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Svree Omsund.
Q What is your address, Mr. Omsund?
A Box 626, Soap Lake.
Q Washington?
A Yes.
Q What is your present age?
A I am 73, going on 74.
Q What is your occupation?
A Fisherman. I have several occupations but that's my occupation?
Q By that, do you mean a commercial fisherman?
A Yes, commercial fisherman.
Q Have you ever engaged in this occupation, in Cook Inlet, Alaska?
[3] A Yes.
Q When have you done this?
A I think it was in 1957, that is, in Cook Inlet, when I was gill netting up there.
Q For whom were you fishing, there?
A The American Pacific Fisheries; PF they call it.
Q How many years have you been up there?

A That was the first year I fished, up there, gill netting. I have seined, up there, a couple of times.

Q You just gill netted, there, one year?

A One year; that's all.

Q With regard to your occupation of gill netting, in Cook Inlet, can you recall any incident involving a time when you may have been apprehended?

A Yes.

Q What year would this have been?

A That was in 1957.

Q Was this while you were on a fishing vessel, in Cook Inlet?

A Yes. I had my own boat and I was all by myself, at the time.

MR. CRANSTON: I ask that the reporter mark as Defendant's Exhibit 1, Chart number 8502, U.S. Coast and Geodetic Survey, 16th edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

[4] (Document marked as Defendant's Exhibit 2 for identification.)

Q Mr. Omsund, I ask that you look at what has been marked as Defendant's Exhibit 1 and ask you if the portion of the map, which I am placing in front of you, including the words Cook Inlet, depicts the area in which you fished?

A Of course, I couldn't pinpoint it, exactly, you know.

Q I am just asking you, at this point, when you speak about Cook Inlet, is this a map of the area where you fished?

A That's right; yes.

Q Now I would ask you, with this red marking pen, to indicate as best you can the place where the arrest, which you have testified about, took place?

A Well, to the best of my knowledge, I would say approximately about here (indicating).

Q Will you place an X there?

A (Witness complies.)

Q You have placed an X, on the chart, between a figure 10 and the Letter L, in the words Cook Inlet?

A Yes.

Q When you were arrested, did the person, who approached you, identify himself as representing any entity?

A Yes.

[5] Q What was the identification this person made?

A The Bureau of Fisheries; that he was from the Bureau of Fisheries. They have a big boat and they are in skiffs. He was going from one fishing boat to another.

Q What government was that?

A It was Alaska, I suppose.

Q What were you directed to do, if anything?

A They stopped me, out there, when they come alongside. They told me to go in to the Harbor, there, you see.

Q By the Harbor, what do you mean?

A Snug Harbor.

Q Snug Harbor?

A Snug Harbor. They followed behind me, as I went in. When I got in, I tied up, alongside of the scow, there, and delivered my fish. Then they came on board and were looking for the license, for the company, because they promised to get my license. When they were and took it to the Superintendent, he didn't have any license, either. So, at that time, I had to fly to Anchorage.

Q What was the specific violation that you were charged with?

A I didn't have a fishing license.

Q Does that mean a license to allow you to fish, commercially?

A Yes. I had the gill net license, but I didn't have the [6] boat license.

Q You needed a license, for your boat, when you said you didn't have this?

A Yes.

MR. BRADLEY: I object to this line of questioning, on the ground that it is leading.

BY MR. CRANSTON:

Q Then you say you flew to Anchorage?

A Yes.

Q What happened, at Anchorage?

A The next day, I was up in the court, there. I got fined $150.

Q Were you asked to make a plea, to say whether you were innocent or guilty?

A Yes. I said I was guilty.

Q What happened to your boat and to the catch which you had made?

A They took the fish, you see.

MR. BRADLEY: I object to the answer on the grounds it is hearsay.

BY MR. CRANSTON:

Q Would you say what they did, again?

A They took the fish, you know, and canned it, right there.

Q By "they," whom do you mean?

A The Bureau of Fisheries. They sent it over to them, you [7] see, from the cannery. I had my boat anchored out, while I was over in Anchorage.

Q Do you know about what month this took place?

A Well, it must have been in July; it must have been in the month of July, yes.

MR. CRANSTON: I have no further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

Q Mr. Omsund, with regard to the mark you have made, on the map, in red ink, were you at this time traveling toward Snug Harbor, when you were apprehended?

A Yes.

* * * *

[8] Q At what point did you receive the enforcement order, to go to Anchorage?

A Right after I tied up the boat and they said I had to go to Anchorage. They first were going to take me to Iliamna Lake, but then they decided to take me to Anchorage.

Q At this time, were you an American citizen?

[9] A Yes.

* * * *

Q Did you keep your boat moored, in the United States?

A Oh, yes; yes.

Q Could you tell me where?

A Blaine. I had left Blaine, at the time, you see. I always tied my boat up, there, during the winter. During the summer, I was mostly in Alaska, you know.

Q You testified that you gill netted only one year, in Cook Inlet?

A That's right; in Cook Inlet, yes.

Q You also testified that you purse seined, before this time?

A Yes.

Q Could you tell us what year?

A It was 1927.

Q Could you please take Mr. Cranston's red pen, here, and mark the location where you purse seined?

A You want me to point out where I fished?

Q Yes, in 1927, in Cook Inlet?

[10] A This was all in Cook Inlet is where it was. Here is one place, where we seined, right here.

Q And you have marked that, on a line between the figure 3½ and 6, in the shoreward end of Kamishak Bay?

A Yes. We fished, there, and we fished over here (indicating).

Q You have now made another mark, immediately under the M, in Kamishack Bay?

A Yes; it is just about right there, where we fished. Then we also fished, down here, and up here.

BY MR. CRANSTON:

Q Would you indicate what you mean by "up here?"

A They call it Halibut Cove. I guess this is Halibut Cove, here.

BY MR. BRADLEY:

Q Would you make a mark, there, please?

A This is Halibut Cove.

Q That is a mark, at the mouth of an inlet designated on the map as Halibut Cove?

A Yes. It says, "Halibut Cove," here. My glasses aren't so good and I can't see, so very good, with these glasses.

But we went down to Port Dick. This is Port Dick, here, I guess.

* * * *

[12] REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Did you ever get your fish back?

A No.

Q Why did you go to Snug Harbor?

A I fished for that company, you see. They have got the cannery, there.

Q After you were apprehended, at the point you made the X, why did you go to Snug Harbor?

A I had to go in there, to the cannery, to deliver my fish.

Q Were you directed to go there?

A No; that's the only place I had to go, because I fished for that company, and they had the cannery right here, in Snug Harbor.

* * * *

[2] HARRY L. RIETZE,

called as a witness by the defendant, having been duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?

A Harry Rietze.

Q What is your address?

A Box 357, Juneau.

Q What is your age?

A Fifty-one.

Q What is your present occupation?

A Regional Director of the Alaska Region of the National Marine Fisheries Service.

Q How long have you had that occupation?

A Since 1960.

Q When in 1960; do you recall?

A I think probably about October or November.

Q Do you know who preceded you in your position?

A Yes, Mr. John Gharrett.

Q Prior to your assuming your present position had you had other responsibilities in Alaska for N.M.F.S. and its predecessor agencies?

[3] A Yes, I had. I have been a research biologist in charge of the Bristol Bay red salmon studies and then have been coordinator and one of three Assistant Regional Directors, but had such functions as statistics and river basins activities and coordinating the responsibilities or activities of research and management together, the inter action.

Q That was in Bristol Bay?

A No. I came to Alaska as a research biologist in Bristol Bay. Later I was promoted to Assistant Regional Director for Staff Coordination. The Administrative Division came under my supervision and the river basis [*sic*] and statistics. My primary function was support activities that coordinated the activities between management activities and research activities, the two primary functions.

Q When did you take over that position you've just described?

A Oh, I believe it was probably in early '59.

Q Then is it safe to say that prior to then you had responsibilities only in Bristol Bay?

A Yes.

* * * *

[4] Q I'm going to hand you, Mr. Rietze, what in the deposition of Mr. Naab was identified as Defendant's Exhibits "8-A" through "8-F" and ask you to examine

those documents and ask you if you have any familiarity with those.

(Above-described documents examined by the witness.)

A Well, I'm not sure that I would say I am familiar with them. I have seen them in years past. I am not intimately familiar with the charts, no.

[5] Q These are charts that are lodged in the Juneau office of the National Marine Fisheries Service, are they not?

A Yes.

Q Do you know if there are any other similar charts in existence?

A I think there might be. Would you clarify what you mean by similar? What is the degree of similarity?

Q I will ask you, are these, so far as you are aware, the originals of these charts?

A Yes, I think insofar as I would be aware they would be.

Q I take it then you do not know of any (let's put it this way) documents or charts which would be more original than these?

A No.

Q What do you know concerning the origin of these charts?

A Well, I would tentatively identify these as what we've called the Scudder-Gharrett Line Charts. Am I correct in my identification of these?

Q Unfortunately I can't refresh your memory. I have to ask you the questions. I will tell you that these were identified in that respect by Mr. Naab in his deposition.

A Yes. If these are the charts that this cursory inspection would lead me to believe they are, I think they are probably the ones that Mr. Gharrett and Mr. Scudder drew up at one time, probably back in 1957 or so, or '58, in response to [6] some negotiations or meetings that we had with the Canadian Government relative to both governments desiring to curtail the spread of salmon fisheries. So both governments and the various states that were involved in salmon fishing came up with lines

from which these lines would be used to say that no net fisheries would be permitted seaward of the lines.

Q Were these charts presented to the Canadians, do you know, at any international conferences?

A I'm not sure of that. If I remember correctly, the Canadians originated lines first, and I believe the lines went along the States of Washington and Oregon, and at a particular meeting back in '57 or '58 I believe that Mr. Gharrett and Mr. Terry drew some rough lines in response to a request from the Canadians for lines from which Alaska was going to regulate their net fishing for salmon. I'm not certain if the later lines that were refined and drawn have been presented to the Canadians or not. I'm not sure of that.

Q Are these lines represented on Exhibit "8-A" through "8-H" lines which were presented to the Canadians with reference to this salmon fishery on the high seas problem, or do you know?

A No, I do not know. This was before I was directly involved in it and I do not know whether these were presented [7] to the Canadians or not.

Q Do you know whether these were the lines that were produced in response to the Canadians' request for lines similar to theirs?

A I think they are but again, I am not an enforcement specialist, and I have an enforcement staff that's advisors to me and I would think that Ron Naab would be able to identify these more precisely than I would be able to as an administrator.

* * * *

[16] Q When you speak of enforcement and surveillance, what type of laws are you enforcing?

A We're enforcing bilateral or multilateral agreements that we have with foreign countries, some twelve or thirteen [17] either treaties or agreements that we have with the Soviet Union, Japan and Canada.

* * * *

[21] Q May Canadians fish in the territorial sea or inland waters of the United States?

A No.

Q Even for halibut?
A No.
Q No, they may not?
[22] A No, they may not fish for halibut in the inland waters or territorial waters of the United States.
Q In your work that Mr. Cranston has discussed did any of your activities depend upon the limits of the territorial sea of the United States?
A I'm not sure I understand that question.
Q Did laws that you were to enforce—did the regulations applicable to certain fishing change at the limits of the territorial sea for instance? Did you have to know the location of the territorial sea for some of your activities as Regional Supervisor for National Marine Fisheries Service?
A Yes.
Q Did you ever ask for advice as to the location of this territorial sea?
A Yes, we have.
Q Who did you ask and what was the response?
A I think we've requested from Mr. Terry, both in his capacity as Acting Deputy Director of the Bureau and also when he was Chief of the Division of International Affairs. We have requested from him guidance on where the limits of the territorial sea would be in waters off Alaska.—also other individuals from time to time for several years. Mr. Rollins is one that I think we've requested this information from and I think, perhaps, Mr. Baker when he was Chief of the Division of Resource [23] Management, that we have requested guidance on for the territorial waters.
Q What did they tell you?
MR. CRANSTON: I object to whatever they told him as being hearsay.
Q What were you instructed?
MR. CRANSTON: The same objection.
A We were instructed to use Pearcy's principles and follow these, and if we found foreign fishing vessels that were within three miles of a point of land we could be guided by this, but be guided by Pearcy's principles

in determining where the boundaries of the territorial waters were.
Q What do you mean by Pearcy's principles?
A G. Edsell Pearcy set forth in a publication—described the ways in which—I believe it was the Geneva Conference—in which it was accepted by the nations at the Geneva Conference in which they would determine how the limits of the territorial sea and bay closures would be made, and Pearcy had a publication out on this. We used Pearcy's principles following the sinuosities of the coast and the twenty-four mile line closing for bays and the definition of the difference between a bay and an indentation. We followed these principles in determining our areas of where we were enforcing international waters, the regulations [24] that we were responsible to enforce in international waters.
Q Prior to this year were you ever given a set of maps showing the territorial sea of the United States and told, "This is official. Follow it"?
A No, sir, we were not.
Q The international agreements, bilateral and multilateral, you spoke of, do those apply to areas outside the territorial sea or areas inside the territorial sea?
A Outside of the territorial sea.
Q Do you know of any foreign country that is permitted to fish in the territorial sea of the United States?
A No, I do not.

* * * *

[29] RECROSS EXAMINATION

BY MR. CHARNEY:

Q In your enforcement activities have you assumed that Cook Inlet was a historic bay?
A I think we've, again using Pearcy's principles of assuming the line across there from which we have measured the territorial sea—it would be from Kalgin Island across this way, and I have never considered the question in my own mind—have never considered the question of whether Cook Inlet is or is not a historic bay.

MR. CHARNEY: No further questions.

MR. CRANSTON: Then you've simply used a pure mathematical computation, is that correct, in applying Pearcy's principles?

A Yes, I think that's correct.

* * * *

[1] HENRY CLAY SCUDDER,

a witness produced on behalf of defendant, being first duly sworn by Ada R. Michelsen, Notary Public of the State of California, for the County of Santa Barbara, to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

THE REPORTER: State your full name, please.

THE WITNESS: Henry Clay Scudder.

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Scudder, what is your age?
A Seventy-nine.
Q What is your address?
A 3768 Brenner Drive, Santa Barbara.
Q How long have you lived here?
A Since September, 1962.
Q Are you presently employed?
A No, I am retired.

Q Mr. Scudder, did you prepare at my request, in preparation for your deposition, a resume of your employment, experience, and history?

A Yes.

MR. CRANSTON: I would like this document entitled "Duty Stations and Assignments with U.S. Bureau of Fisheries [2] and Successor Agencies" marked as Defendant's Deposition Exhibit 1.

(Whereupon, the exhibit so described was so marked by the reporter.)

BY MR. CRANSTON:

Q All right, Mr. Scudder, I am going to hand you Defendant's Deposition Exhibit 1 and ask you if you prepared this at my request.

A No, I prepared that for—yes, yes.

Q All right now, without going into a lot of detail on it, does it accurately state your employment history?

A As near as I can tell from the old assignment orders I have and the field diaries, this is reasonably accurate.

MR. CRANSTON: Counsel, would there be any objection based on hearsay to the incorporation of this document into the record of this deposition so that we don't have to go through the entire question and answer on what he has done?

MR. CHARNEY: I gather that he is testifying that this is accurate.

BY MR. CRANSTON:

Q Yes. Are you testifying that this is accurate?

A Yes, within reasonable limits. I used the years, rather than the months and the days.

MR. CRANSTON: Fine. But there would be no hearsay objection, is that correct, as to this? Because it is certainly not prepared in the course of his employment.

[3] MR. CHARNEY: No, I gather that he is testifying to it. Do you want me to ask a question?

MR. CRANSTON: If you want to voir dire the exhibit, yes.

VOIR DIRE EXAMINATION

BY MR. CHARNEY:

Q Mr. Scudder, did you prepare this by refreshing your memory, or did you prepare this from other documents?

A I took the documents from my old field reports and assignments of employees in the Alaska service and duty station that was published for a few years by the Alaska Annual Report.

Q Do you remember these things on your own or after refreshing your recollection?

A I remember the places and the assignments I had, but the dates, I had to check back in the old records for the dates.

MR. CHARNEY: I have no further questions.

THE WITNESS: All those dates are documented in government reports.

DIRECT EXAMINATION (continued)

BY MR. CRANSTON:

Q And after you refreshed yourself as to these dates, now you remember these to be the correct dates, is that correct?

A Yes.

[4] MR. CRANSTON: You stated you had no objection?

MR. CHARNEY: I don't think there is a hearsay objection.

BY MR. CRANSTON:

Q Mr. Scudder, were you in the Cook Inlet area in 1920?

A Yes.

Q In accordance with your work in the Cook Inlet area, did you prepare reports of your daily work and movements?

A Yes.

Q Were these reports made by you in the course of carrying out your duties?

A Yes.

MR. CRANSTON: I would like to have this document, consisting of six pages which are headed "Report of Daily Work and Movements of Henry C. Scudder, Assistant Agent, Alaska Fisheries Service, for the period from July 1st to 15th, 1920, inclusive," two pages, and the same report for the period of July 16 to 31, 1920, inclusive; and two pages of the same type of report for the period from August 1st to August 15th, 1920,

inclusive, I would like all these six pages collectively marked as Defendant's Deposition Exhibit 2.

(Whereupon, the above described documents were so marked by the reporter.)

BY MR. CRANSTON:

Q Mr. Scudder, I am going to hand you [5] what has been marked as Defendant's Deposition Exhibit 2 and ask you if you recognize these six pages.

A Yes.

Q Were these pages prepared by you?

A Yes.

Q And they were prepared by you in connection with your duties as Assistant Agent for the Alaska Fisheries Service?

MR. CHARNEY: Objection.

BY MR. CRANSTON:

Q All right, would you tell me the circumstances under which these were prepared?

A It was required by the office, the Washington office, that each field agent make a report of his field activities.

Q And was this such a report?

A Yes.

Q And where on the second page the words "H. C. Scudder" appear, is that your signature?

A Yes.

Q And on the fourth page—well, let me hand you this—I will ask you to look at the signature on the fourth page.

(Whereupon, witness studies fourth page)

A Yes, that is my signature.

Q Is that your signature?

A Yes, uh-huh.

[6] Q And on the sixth page, there is a signature, "H. C. Scudder," is that your signature?

A Yes.

Q Did you submit this report to the Washington office?

A The original one to the Washington office.

Q And what is this particular exhibit? Is this a copy of what you submitted?

A It is a copy of the original, yes.

Q Did you keep this copy yourself?

A Yes, I kept that in my personal file because of an incident that is reported, I believe, in relation to Iliamna Bay where some cannery men had left their employment in Bristol Bay and had walked across the peninsula hoping to get a boat that would take them to Anchorage, and I believe two of them perished, and two of them were picked up. We picked them up on the beach that day, and the reason for this was that I had hoped that at some future time to write a story around this, so I wanted the notes that I had made that covered this itinerary as a reference.

Q Your notes for July 26th of 1920, which appears on page 4 of the exhibit, states as follows:

"Arrived in Kenai at 1:00 a.m. Took up temporary quarters at the Libby cannery. The period from the 26th to 31st was used in visiting trap locations and canneries in Cook Inlet. A fair run of fish is making in this [7] locality, but the majority of them have set in North of Point Possession. From all reports, the South end of the Inlet has had very little of the run."

Now, Mr. Scudder, when you refer to the "South end of the Inlet" in this particular report, what part of the Inlet do you refer to, what portion?

A Oh, that would have been from Illiamna Bay down to the southern extremity of Cook Inlet district. I think it is now referred to as the Southern District and the Outer District, that is, the southern limits of Cook Inlet area.

Q What landmark do you refer to, then?

A That is from Cape Douglas to Point Gore.

Q Now, in 1920, did you concern yourself with the south end of the Inlet?

A Yes, I was concerned about the run down there in that area because that would have been reflected in a later run further up the Inlet.

Q Did you have management responsibilities, fishery management responsibilities in that year?

A Oh, yes.

Q Was this part of the Inlet under your management responsibility?

A Yes.

Q By this part, I refer to what you referred to as the south end.

[8] A Yes.

MR. CRANSTON: I would like to have marked as Defendant's Deposition Exhibit 3 a photocopy which is blown down in size of U.S. Coast and Geodetic Survey Chart 8502, 16th Edition, July 4/70, corrected through notice to mariners 27/70, together with an overlay which contains the lettering "proposed base line from which to measure three-mile limit for fishery regulations, overlay for U.S.O. & G.S. Chart 8502, Cape St. Elias to Shumagin Islands."

(Whereupon, the Chart 8502 and its overlay were marked as Defendant's Deposition Exhibit No. 3 by the reporter.)

BY MR. CRANSTON:

Q Mr. Scudder, I am going to hand you what has been marked as Defendant's Deposition Exhibit 3 and ask you if you recognize it?

A Well, this is a greatly reduced form, but it is evidently a copy of, a reproduction of a line that I projected.

Q Then the answer is you do recognize this?

A Yes.

Q Now, did you place or cause to be placed on the overlay the black line which appears on it?

A What was the question?

Q Did you place or cause to be placed on the overlay that black line which appears on it?

A My black line was on the original chart, not on an overlay, the one that I made.

Q Does the black line which you placed on the [9] original chart coincide with the line as it appears on the overlay?

A Yes.

Q All right, did you place or cause to be placed on the chart the lettering which commences "Proposed base line from which to measure three-mile limit for fishery regulations"?

A Yes.

Q Now, down in the lower right hand corner, there is a notation which is indicated, "4/57": What does that indicate?

A That was the date the thing was made.

Q Would that indicate the date about which you prepared the line and the lettering?

A Yes, yes, it was I believe in 1957.

Q Were you asked to do this?

A Yes.

Q Who asked you to do this?

A The Regional Director, John Gharett.

Q You say "Regional Director": What was he a Regional Director of?

A Region Six in Alaska, that was all Alaska.

Q And that was for the United States Bureau of Commercial Fisheries at that time?

A That's right.

Q At the time you prepared the chart, by whom were you [10] employed?

A By the United States Bureau of Fisheries.

Q And your employment at that time would be disclosed by Exhibit 1, which lists your employment history, is that right?

A Yes.

Q Did you prepare this chart as part of your duties?

A Yes.

Q Now, with reference to the portion of the chart which includes Cook Inlet, what if anything did you consider in placing Cook Inlet within the landward side of that base line?

A Well, we had always considered Cook Inlet as Alaska Waters.

Q Were there any precedents, if any, you relied on?

A Yes, we had the Southwestern Alaska Reservation, which was set aside because of the diminishing salmon runs, and in Bristol Bay and Cook Inlet, and this was divided into three areas: Bristol Bay, Kodiak, and Cook Inlet.

Q Did you consider any other matters besides the Southwestern Fishery Regulations with respect to Cook Inlet?

A You mean in this vicinity?

Q With respect to Cook Inlet.

A Well, Shelikof Straits, that was taken into consideration, that was considered as Alaska waters.

Q At this time I am referring to the Cook Inlet [11] area and what other precedents did you rely on, if any?

A We had the 1942 White Act.

Q You mean the 1924 White Act which described these areas. Do you know if any other charts of this type or nature were prepared by the Bureau of Commercial Fisheries or the Fish and Wildlife Service?

A This is the only one that I recall as having been made in our office for this particular region.

Q Do you know for what purpose this chart was prepared?

A Yes, that was to delineate the base line upon which the United States government proposed that the high seas fishing be limited to, that is, three miles outside of that base line would be the limit of the high seas fishing, as opposed to fishing in Alaska waters.

Q Did you ever attend any of the conferences where any of these matters were discussed?

A Not where the map was used, no.

MR. CRANSTON: I have no further questions.

CROSS EXAMINATION

BY MR. CHARNEY:

• • • •

[17] Q And some of it at Shumagin Island: You drew those lines also?

A No, I didn't draw those lines.

Q Now, have you gone over this map in detail to make sure that it is exactly what you drew.

A As near as I can tell from my memory. I know at the time I was preparing this chart, there was a great, there was a considerable consideration being given to the southern limits of Shelikof Straits, and I am not too sure if this was my line, whether my line went from here to here. (indicating.)

Q Okay, let's make sure we understand each other. [18] When you said, "I am not sure that that is my line," it is the line from Cape Kilokak Rocks?

A I believe so, yes.

Q Of whether you drew from Kodiak Island to what, Foggy Cape?

A Yes—no, it would have been right angles, it would have been to the same point.

* * * *

[21] Q Did you ever seize a foreign vessel in Cook Inlet?

A Did I ever seize one?

Q Yes.

A No.

Q Did you ever board one?

A No.

Q Did you ever tell any foreign vessel or foreign [22] fisherman to stay out of Cook Inlet?

A No.

* * * *

Q Were there other maps you drew?

A Did I draw other maps?

Q Yes.

A I drew a great number of maps.

[23] Q Did you draw others like this of other areas of Alaska?

A Yes, southeastern.

Q How about Bristol Bay?

A I don't recall making any detailed maps of Bristol Bay. I may have in connection with the gill-net fishery.

Q Now, what did you do there?

A Pardon?

Q What did you do in that regard, what type of maps?

A I am not too sure. I may have made one, but I can't say for sure that I did. I know a lot of reports went over my desk regarding the history of the gill-net fishery of Bristol Bay, but whether I made any maps in connection with it or not, I don't recall.

Q Are you a lawyer?

A No. sir. My formal education was in engineering.

MR. CHARNEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Scudder, with regard to the placement of the line on Defendant's Deposition Exhibit 3, you do recall—or I will question you—do you recall drawing the line as is represented on the overlay, commencing at Cape Yakataga thence to Cape St. Elias, do you recall?

A The alternate line?

[24] Q No. I will hand you the exhibit and ask you to look at it. Starting at the righthand corner, it picks up at Cape Yakataga.

A Uh-huh.

Q And proceeds to Cape St. Elias?

A Yes.

Q Now, is this the line as depicted on that exhibit which you intended to draw back in 1957?

A As I recall it, that is it.

Q And then proceeding on as it appears on the exhibit to Hinchinbrook Island?

A Yes.

Q Is that the line you intended to draw?

A Yes.

Q And then proceeding to Zaikof Point, is that the line you intended to draw?

A Yes.

Q And then proceeding to Cape Cleare?
A Yes.
Q Is that the line you intended to draw?
A Yes.
Q And then to Seal Rock?
A Yes.
Q Is that the line you intended to draw?
A As I recall it, that is it.
Q And then to Perl Island, is that the line you [25] intended to draw?
A As I recall it now, I think we used Point Gore as a point of delineation.
Q Are you saying it could either have been Point Gore—
A It could have been either Point Gore or Perl Island.
Q And then to Point Banks?
A Then to Point Banks, yes.
Q And thence to Marmot Cape?
A Yes.
Q And thence to Ugak Island?
A Yes.
Q And thence to Cape Sitkinak?
A Yes.
Q And from Cape Sitkinak thence around Kodiak Island and to the opposite shore of the Alaska Peninsula.
A As I said before, it is not quite clear to me now whether that was the line or whether we ran the line straight across to commence at right angles at the southern tip.

* * * *

[26] Q Now you said you had boarding authority on the [27] high seas. Was it your responsibility to enforce various treaties to which the United States was a party?
A Yes, we had the Whaling Act, the Halibut Act, the High Seas Fishing Abstention on the 175th east meridian.

* * * *

[28] RECROSS EXAMINATION

BY MR. CHARNEY:

Q Would you board these foreign vessels on the high seas?
A Did I board?
Q Would you, did you have authority to?
A Have I been aboard them?
Q Yes.
A On the high seas?
Q Yes, in the course of your routine patrols.
A Yes.
Q Did they have closed seasons also?
A In this instance, it was Japanese fishing boats that were fishing on a quota in specific areas in the Bering Sea on species other than salmon. Our interest in this boarding was to determine if halibut was being caught incidental to the other fishes.
Q Why was this?
A We wanted to determine if there was an excessive amount of halibut being taken with their trawlers, who were fishing bottom fish for the purpose of scrap fish for meal and oil, and we were concerned as to whether or not they [29] were taking halibut, and if so, to what extent.
Q Would this be a violation of the treaty?
A Yes.
Q Were Americans free to fish salmon more than three miles out all year?
A In what area?
Q Say in Bristol Bay.
A In the Bristol Bay, yes, they fished more than three miles off shore, certainly.
Q Did they ever have closed seasons?
A Did they what?
Q Ever have closed seasons?
A Closed season? Well, the Bristol Bay fishing season usually started on the first of July, and it was played by ear, relating the catch to the availability of spawning stocks, and when it reached the point that it looked critical, why then they would close it off for a day or two days or three days or a week, depending upon the availability of spawning stock.
Q Did Americans fish more than three miles off of the line shown on Deposition Exhibit 3?

A Yes, they trawl off there.
Q Where?
A Well, we have had trawlers all the way from Bering Sea down.
Q Did you ever watch for them?
[30] A Ever watch them?
Q Were they part of your, were they under your regulation?
A They are part of our responsibility, yes.
MR. CHARNEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Just a couple more, Mr. Scudder. You were asked whether you ever seized a foreign vessel in Cook Inlet, and you said you never had. Did you ever personally observe a foreign fishing vessel in Cook Inlet?
A No.
Q Now, when you speak of Americans fishing more than three miles off shore, do you refer to fishing by trawling more than three miles off shore?
A Well, yes, and we had purse seining more than three miles off shore in southeastern Alaska—that was in the early days of course, of fishing.

* * * *

[2] CLAUDE WILLIAM SHEA

called as a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

* * * *

[3] Q Have you had any former occupations, with the United States Government?
A I began my career, with the United States Government, in 1942, as a biological assistant, on Kodiak Island. I went into service and then I returned to state

service and transferred back to the United States Fish & Wildlife Service, in 1953. I was employed as Commercial Fishery Agent GS7, out of Cook Inlet, with my main station at Anchorage, Alaska.
Q How long did you work as Commercial Fishery Agent, in Cook Inlet?
A The exact dates I am not sure of, but it was approximately from April until October or November, of 1953.
Q You were there, then, one year, is that correct?
A One commercial fishing season and the hunting season.
Q When you were stationed on Kodiak Island, in 1942, did you have any involvement with the Cook Inlet area?
A None.
Q Generally, what were your duties, in Cook Inlet, as Commercial Fishery Agent?
A My duties, as Commercial Fishery Agent in Cook Inlet, were to enforce the commercial fishing regulations and game regulations, as I could interpret the game law, [4] under the direct supervision of Mr. Larson, who was the Supervisor for the region.
Q When you talk about commercial fishery regulations, in Alaska, are you familiar with the legislation known as the White Act?
MR. BRADLEY: I object to the question.

BY MR. CRANSTON:

Q Are you familiar with the White Act?
A No.
Q What regulations are you familiar with?
A Those published in Juneau and distributed to the region, in pamphlet form, that set aside areas, regions, opening and closing dates and the mesh size, in regions.
Q What was the type of fishery carried on, in Cook Inlet, while you were there, and I refer to commercial fishery?
A Basically, it was stake set nets and drift gill nets, in the Inlet, for salmon.

Q Did any regulations apply to the drift gill net fishery?

A Yes, sir.

Q Generally, could you describe the type of regulation involved, with respect to the gill net fishery?

A There was fish size, mesh depth, net length; there were open and closed periods; there were certain restricted areas, as to the mouths of streams and the closeness of gear. Stake set gear couldn't be closer [5] than—this is from memory only, don't quote—600 feet, 300 feet between traps or 600 feet between stake nets and traps, and trap distance which is the part I don't know. We did have commercial, driven fish traps, on the Ninilchik beach.

MR. BRADLEY: I object to this as being evidence of what the regulations actually were.

BY MR. CRANSTON:

Q Did you ever engage in any patrol activity, in Cook Inlet?

A Yes, sir.

Q This was while you were Commercial Fishery Agent?

MR. BRADLEY: Objected to as being a leading question.

A Yes, sir.

BY MR. CRANSTON:

Q What means did you use, to carry out your patrols?

A The patrol was basically done with government aircraft, twin engine Grummans and Widgeon aircraft, some boat patrols by government owned small craft, 30-foot vessels. As my duties were directing the placement of enforcement people, also, I did not utilize the patrol craft, because it was too slow, between points. I basically relied on aircraft patrols of the Inlet, to observe and locate concentrated fishing areas—that should be rephrased to areas that held commercial fishing boats, that would be capable of violations. I kept most of the fleets under [6] observation, as to the runs of fish, as they were expected and where they were expected, and deployed the personnel, that I was responsible for, for preventive enforcement type patrols.

Q When you talk about fleets, to what do you refer?

A I am referring to the floating fishing vessels, of gill net capacity or of gill net type. There is a regulation, 42 feet, that all vessels be less than that. The normal fishing vessel would be 28 feet to a 35-foot vessel.

MR. CRANSTON: I would like to have marked as Defendant's deposition Exhibit 1, U.S. Coast & Geodetic Survey Chart 8502, 16th edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

(Document marked as Defendant's Exhibit 1 for identification.)

Q Mr. Shea, I am going to hand you what has been marked as Defendant's Exhibit 1 and ask if included within the area, designated on that exhibit as Cook Inlet, is the area over which you carried out your responsibilities, as Commercial Fishery Agent?

A Yes, sir; that, in addition to land not mentioned, in your question.

Q Generally, with reference to geographic features, on Exhibit 1, would you indicate the area over which you [7] carried out your duties?

MR. BRADLEY: If this question goes to an interpretation of the regulations, I object.

MR. CRANSTON: I want him to tell me, factually, the area.

BY MR. CRANSTON:

Q At this point, don't make any marks on the chart, but describe—in reference to land marks—the areas over which you carried out your duties?

A As I previously stated, my residence station was Anchorage, Alaska, between Knik Arm and Turnagain Arm. Patrol flights were conducted from Anchorage and from Kenai. During the peak of the fishing season, my flights originated in Kenai. I flew southerly, in commercial aircraft, from Kenai, in a southwesterly direction, as far as English Bay or the town of Seldovia. This took care of the beach fishery patrols, the fish trap patrols.

We went westerly, from Seldovia, to Snug Harbor, on the westerly shore of Cook Inlet. We then flew northerly, past and inside Kalgin Island to Redoubt Bay and West Foreland. We would double back and come back down, through the center of the bay—inlet—over Kalgin Island and down into the drift gill net area, and would terminate the patrol, if it warranted [8] termination, then return to Kenai and the flight, usually, under normal circumstances would consume about a two-hour flight.

Q Would you take a red marking pen and draw an outline of what you referred to as the drift gill net area, on Exhibit 1?

A In the way of explanation, as to defining such a drift gill net area, drift gill netting is accomplished in cloudy water or in the dark of the evening. Being in this latitude, darkness was not too prevalent, and the fishermen then relied on the cloudy water. The cloudy water would extend about—as far as I recall—to Anchor Point or thereabouts. So that the prime gill net area would apply in a broad area, southerly of Kalgin Island, into Snug Harbor and down in an area of this magnitude (indicating).

Q You have drawn a figure, on the map, outlining in red, the southerly extent of which is approximately the letter L, in Cook Inlet—?

A Yes, sir.

Q —encompassing an area which extends up to a line, approximately at the latitude of Kenai?

A Yes, sir.

Q By this area, you have indicated that within that outline area is the area of the drift gill net fishery?

[9] A To my recollection, it is the prime area. There are other areas fished, I am sure. This was the concentrated area that we had our patrol in.

MR. BRADLEY: As to the conclusion, which Mr. Shea has drawn, I object that he is not qualified to make a statement as conclusive as that, having enforced in Cook Inlet only one year.

BY MR. CRANSTON:

Q Did you ever observe drift gill net boats, in the area you have outlined in red?

A Numerous times. On most open fishing season patrols, this was the concentrated area, in which I observed commercial fishing by gill net.

Q What type of training did you receive, relative to your knowledge of commercial fishing activity?

A I have fished, commercially, when I attended high school, in Puget Sound; both gill net and reef net. Prior to appointment, in Cook Inlet, as Commercial Fishery Agent, I was approximately, for three and a half years, Commercial Fishery Agent for the State of Washington, in Puget Sound, which included gill netting and reef netting and purse seining and other types of enforcement, other than salmon regulations. I basically had approximately—prior to the Inlet—six years of commercial fishery experience.

[10] Q Did this six years include drift gill net experience?

A Yes.

MR. BRADLEY: Objection, for the record.

BY MR. CRANSTON:

Q Did you patrol the area which you have outlined in red?

A Yes, sir.

Q What type of activity were you looking for, in that area, when you patrolled?

A Early and late fishing, contrary to the rules and regulations, as established by the Fish & Wildlife Service.

Q Were you looking for any other type of activity?

A Well, all observed commercial violations are synonymous with a routine patrol.

Q Who was your immediate supervisor?

A Holgar Larson.

Q Did you receive any instructions, regarding the areas you were to patrol?

A Yes.

Q From who were these instructions received?

A Directly from Holgar Larson.

Q Did you carry out your patrol, pursuant to his instructions?

A Yes, sir; to the best of my ability.

* * * *

[12] Q Did you ever engage in any patrols, while on a patrol vessel?

A Will you rephrase that, please?

Q Did you ever, yourself, engage in any patrols, on a vessel, as distinguished from an aircraft?

A Yes, sir.

Q Where did you make your vessel patrols, again with reference to land marks on Exhibit 1?

A From Seldovia to English Bay or Port Graham Cannery.

Q What vessels were these, on which you did this; do you recall the names; you have just referred to two, earlier in your deposition, the Chum and the Steelhead?

[13] A The Chum and the Steelhead.

Q Would it have been one of those?

A It would have been one of those vessels. I believe it was the Chum.

Q In your patrolling, did you concern yourself with your distance from the shoreline, in Cook Inlet?

A No, sir.

Q Did you ever make any arrests or stop any fishing vessels, in Cook Inlet, or attempt to stop any vessels, pursuant to your duties?

A Yes, sir.

Q Would you indicate, by this black marking pen. where in Cook Inlet you made the attempt?

A Speaking of one, specific instance, at this point?

Q Well, was there more than one instance, if you can recall?

A At this point, I would like an interpretation if vessels tending stake nets would be classified as this type of fishing vessel?

Q Again, let me qualify that, with respect to the drift net fishery.

A In answer to your question, regarding the drift net fishery, it was approximately in this location designated by a black arrow. I will indicate the approximate location of one, which was observed and [14] arrested.

Q You have placed a dot, at the top end of a black arrow, within that red, outlined area, which you earlier described?

A Yes, sir.

Q What month would this have taken place in?

A It would have taken place in the month of July.

Q What was involved, if you can remember?

A The incident I am referring to refers to a routine patrol, by government aircraft, on a closed patrolling, after the legal open season. Approximately two hours to two and a half hours, after closed area, I was completing my routine patrol, down the middle of the Inlet, and I observed a gill net vessel, with his full gear—and by this I mean net—still in the water and no attempting being made to recover the gear, contrary to the rules and regulations. He was in violation of fishing, during the closed period.

Q What did you do?

A I instructed my pilot to circle the aircraft and to buzz him, to see if he was asleep or arouse him enough to indicate that he was in violation. We had no response, from the vessel, at all, and after numerous passes with the aircraft, we landed. I then personally boarded the fishing vessel and looked for evidence of the [15] reason for violation. No one was aboard the vessel, at that time, and I began retrieving the net, by hand, from the water.

Q Did the vessel have a name?

A Yes, either a name or a number.

Q What was the name or the number?

A I do not recall that, at this time.

Q You said you retrieved the gear?

A Yes, sir.

MR. BRADLEY: That is a leading question. I object to it.

BY MR. CRANSTON:

Q What did you do with the gear?

A I removed the gear from the water and stacked it, in the boat, taking the fish from the net and attempting to separate the majority of the fish.

Q Then what did you do?

A I radioed, an open broadcast, on the fishing channel frequency—correction. This is an assumption, on my part. I called for a cannery tender, to aid me in taking the boat under tow, at my direction, to Snug Harbor, and abate the net and boat and fish, in the name of the United States Fish & Wildlife Service. I requested that the fish be processed and the fish tickets be made out to the Fish & Wildlife Service, [16] on which I received the fish tickets and held them as evidence of illegal fish being taken, and asked that the net and the boat be held, until court.

Q Was there a court proceeding?

A Yes, sir.

Q Were you present, at the court proceeding?

A Yes, sir.

Q Would you describe what took place, at court, to the best that you can remember?

A To the best of my knowledge, at this time, I cannot recall the court proceedings, other than presenting the fish ticket to the Commissioner's Court, as evidence of illegal fishery. I can remember the disposition of the fish that were seized.

MR. BRADLEY: I object to the answer as being hearsay.

A (Continuing) I can recall the fish tickets being presented, as evidence, and the court awarding the fish to the United States Fish & Wildlife Service. A fine was imposed on the owner of the vessel or on the operator of the vessel. The fishing net and the boat were then returned to the operator.

MR. BRADLEY: I object to this, also.

BY MR. CRANSTON:

Q Do you recall, at this time, the name of the operator?

A No, sir.

[17] Q What court was this; where was the court located; do you recall the town?

A It would be an assumption, on my part, at this point, to say definitely that it was in Jack English's

court, in Seldovia. We also held court in Kenai, Alaska, two designated points and the only two.

Q The Jack English, that you referred to, was he the Commissioner?

A Commissioner of Court. These records could be verified, through the Commissioner's Court.

Q Did you ever observe any foreign vessels fishing in Cook Inlet?

A Not to my knowledge, sir.

Q Did you ever observe any Canadian vessels, fishing for halibut, in Cook Inlet?

A Not to my knowledge, sir. May I make a point, here?

Q Yes?

A I believe that Cook Inlet was designated as spawning grounds, for halibut, under international treaty, and I don't believe that they were allowed to long line, in the inlet.

• • • •

[19] Q Did you ever receive any instructions, from anyone in the Fish & Wildlife Service, relative to a policy regarding Canadian halibut vessels, in Cook Inlet?

A No, sir.

Q On your aircraft patrols, did you have to abide by any laws and regulations of any other agency?

A Yes, sir.

Q What agency?

A U.S. Army, the Air Force.

Q Does an instance, involving these regulations, come to your mind?

A Yes, sir.

Q What was that?

A The particular aircraft, that I was in, was flying above the designated elevation—

MR. BRADLEY: I object to that as being a conclusion.

[20] A (Continuing) The aircraft was flying above 2,000 feet, and we were bracketed by army jets and instructed to return to a lower level, where we were not in their protective radar screen type patrols.

MR. BRADLEY: I object to the answer as calling for a conclusion.

BY MR. CRANSTON:

Q Where did this take place?
A Somewhere south of Kalgin Island, down the middle of the inlet.
Q Could you indicate by a red circle, approximately where this took place?
A No, sir.
Q You don't know, specifically?
A I don't know, with reference to any points of land.
Q Could you determine your distance as being within or more than three miles, from any point of land?
MR. BRADLEY: Objected to as being speculative.
A The particular instance, no. The flight originated in Anchorage. I boarded the aircraft in Kenai and we were enroute south, to a point I do not recall, now. We made numerous flights to Iliamna and Cold Bay, and at this time I recall that was the flight we were—or one of the flights that we were on.
Q So, then, you were unable to determine your distance [21] from any shoreline, is that your testimony?
A Yes, sir.
MR. BRADLEY: Objected to.
A (Continuing) It was approximately half an hour, after takeoff.

BY MR. CRANSTON:

Q From where?
A Kenai.
Q How fast did you usually fly?
A 160 knots.
Q In what direction were you flying?
A Southwesterly.
Q To—?
A Toward Iliamna.
Q By Iliamna, do you refer to the bay, Iliamna Bay?
A Lake Iliamna and Cold Bay. We did not fly over the mountainous area. We flew down and went through the old Iliamna Pass, when we went over land.

Q Your course to Kenai, then, would have been on a straight line to what point, on the coast?
MR. BRADLEY: Objected to.
A On a routine flight, I would have instructed to fly over the fishing area, which would have been down the middle of the inlet, terminating the flight at Cold Bay, which would have been a conjunction flight with [22] the Biological Division.

BY MR. CRANSTON:

Q I am trying to determine, exactly, if you can remember, what your initial course was, say, for the first 30 minutes out of Kenai and if you were heading toward any point, at all?
A On a true north course, of approximately 200 degrees.
Q By that, do you mean an azimuth of 200 degrees, for the first 30 minutes?
A A true southerly course of approximately 200 degrees, which would have put us down the middle of the inlet, which was a safety factor and also observation for illegal fishery.
Q You said that your speed was?
A Approximately 160 knots.
Q And this notification took place approximately 30 minutes after you left Kenai?
A Off the record?
Q No; we are on the record?
A That is an assumption. The time is an assumption, on my part.

• • • •

[26] Q You cannot remember where you were flying to, of your own personal knowledge, now?
A As to the point of origin, yes; as to the point of destination, no.
[27] Q And you cannot remember, precisely, how far you were out into the flight, when they stopped you?
A The exact distance, no, sir.
Q The time?
A The approximate time, only.

Q Do you know how fast you happened to be flying, at that time?

A The normal flight speed was 160 knots to 180 knots.

Q But you don't know how fast you were flying, at that time?

A No, sir. It was not my responsibility.

Q So you don't know, with any real degree of particularity, where you were?

A The exact location, no, sir. The approximate location, yes.

* * * *

Q At this speed, on your patrols, would you necessarily have noticed a vessel or have stopped for a vessel or buzzed a vessel, unless you noticed—in flying over—that he were illegally fishing?

A Would you rephrase that, sir?

Q Assuming that you were flying at this speed, that you testified to, would you have noticed or stopped for a [28] vessel or in any sense come back, to do anything with him, unless you had noticed in your over flight, that he was illegally fishing or breaking the rules; would you normally have bothered with him, if you had not noticed that he were not obeying the regulations, as you enforced them?

A Observation, only. As to it being illegal, to anchor a drift net, this would have been observed.

Q But you would have had to observe that he was doing something wrong, before you stopped him?

A Yes, sir.

Q So you would not necessarily have known if a Canadian or a foreign vessel were fishing, in the inlet, unless he were fishing illegally?

A Correct.

Q Going back, again, to the enforcement activity, over this single instance that you remember, was that an American boat?

A Yes.

Q Could you tell me who owned it; was it one of the canneries?

A It would be an assumption, on my part, at this time, but from my action I would say it was a Snug Harbor owned share boat, with Snug Harbor backers or cannery.

Q What?

[29] A I designated it to Snug Harbor. If it had of been a Kenai boat, I would have designated it to Kenai.

Q In other words, you would have called a tender?

A Yes; or have designated the boat to be taken to Kenai.

MR. BRADLEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Is a halibut boat in any way different from a salmon fishing boat?

A Yes, sir.

Q Did you observe any halibut boats, at all, in Cook Inlet, during your activities there?

A Yes, sir.

Q Generally, in what area of Cook Inlet did you observe them?

A Are you referring to fishing or observation of the boats?

Q I am referring to where you observed halibut boats fishing?

A In only one instance did I observe a halibut boat fishing, and that was in English Bay.

BY MR. BRADLEY:

Q Would you please mark that, on the map, in blue pen; why don't you make an X?

A An X circled?

[30] Q Fine?

A (Witness draws X with a circle).

BY MR. CRANSTON:

Q Aside from that X, within a circle, you observed no other halibut boats fishing in Cook Inlet, during your stay, there, is that correct?

A That's correct.

Q Were you able to ascertain the nationality of that particular boat, which you have indicated and placed an X, on the map?

A Yes, sir.

Q What was that?

A He was an American registered, out of an area southwesterly of Seward. He was a local resident and this was his normal fishing area. He was checked, for licenses and gear. This was accomplished, while I was aboard the surface patrol craft.

Q Did you make the area, over which you patrolled, known to any of your supervisors; in other words, did they know about your general patrol activities?

A All flights were authorized. The actual patrol route was at my discretion and the actual times and dates of partol were at my discretion.

Q Ultimately, did someone in a position of Holgar Larson or above know of the areas over which you patrolled; were [31] they made aware of your routes?

A No, sir.

Q Did they know, in a general way, what you were doing?

A Yes, sir.

Q Would they know, for instance, that you patrolled over the area on the map which you have outlined in red, indicating the drift net area?

A Yes, sir.

Q Did anybody, superior to you, ever object to the manner of your patrolling?

A No, sir.

MR. CRANSTON: I have no other questions.

RECROSS EXAMINATION

BY MR. BRADLEY:

Q Did you make daily reports to Holgar Larson, of the flights in the areas?

A No, sir.

* * * *

[3] DONALD J. SIMON,

Chief of Records Services Division, United States Department of State, a witness in the above-entitled cause, was called for examination by counsel for Defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q All right, would you state your full name, please?

A Donald J. Simon, S-i-m-o-n.

Q What is your address?

A 7504 Havelock Street, Springfield, Virginia.

Q And what is your age?

A Fifty.

Q What is your occupation?

A I am Chief of the Records Services Division and Records Officer for the Department.

Q And by the "Department," you refer to the Department of State, is that correct?

A Right.

Q How long have you had this position?

A Since 1957; fourteen years.

* * * *

[54] Q Now, Mr. Simon, one of my earlier questions to you related to Defendant's Exhibit 1, and the third paragraph of that exhibit which related to an extensive search of the records of the Department by the Office of Legal Advisor. I would like to have marked as Defendant's Exhibit 3 this typewritten list entitled "Records of Waters of Cook Inlet off the Coast of Alaska."

(Document marked Simon's Deposition Exhibit No. 3 for identification.)

BY MR. CRANSTON:

Q I will hand you what has been marked as Defendant's Exhibit 3 entitled "Records of Waters of Cook Inlet

off the Coast of Alaska" and ask you if these would be the files normally searched by the Office of Legal Adviser in order to determine the statutes of Cook Inlet as territorial waters and in order to form the basis of the response contained in the letters both of Defendant's Exhibit 1 and Defendant's Exhibit 2?

A Well, first off, I really don't know what the legal Advisor's office had searched because I have no idea of whether they have asked us to search this or whether they [55] searched it in their own office or whether they searched it with other offices. Nine years ago, I don't have the slightest idea. If they had asked us to search for it in our files, I would say yes, these are the places we would search for it.

Q In order to elicit the information contained in the Department's files sufficient to form the response contained in these two letters?

A I would say these places would be the logical places to search, yes.

* * * *

[3] JOHN B. SKERRY,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?
A John B. Skerry.
Q And what is your residence?
A 4 Rackliff Street, Gloucester, Massachusetts, 01930.
Q What is your age now?
A Fifty-two.
Q What is your occupation?
A I am chief of the Division of Enforcement Surveillance for the Region 3 of the National Marine Fishery Service.

Q And how long have you been in your present position?

A Ten years.

Q Now, I am going to ask you a series of questions and mainly, so it is clear, I am not really taxing your memory but we have to get at some facts in this case and this is why you are here.

A All right.

[4] Q And what you are saying today is much as if you would be testifying in court if we were presently sitting before a judge.

A I understand that.

Q Before you took over your position in Gloucester, where were you stationed?

A I was stationed at Woods Hole Biological Laboratory in Woods Hole, Massachusetts, as a research biologist.

Q How long were you there?

A I was there approximately two years.

Q That would have been—

A From September of 1959 until February of 1961.

Q All right. Before you were in Woods Hole where were you stationed?

A I was stationed in Anchorage, Alaska, with the responsibility for the Cook Inlet District.

Q And what years were you stationed in Anchorage?

A I arrived in May of 1955 and remained there until late August of 1959.

Q And the agency for whom you worked at that time was—

A The Bureau of Commercial—

Q Named what?

A The Bureau of Commercial Fisheries at that time. The [5] Fish and Wild Life Service had been split into two bureaus, and at the time I was transferred there. In 1955 it became the Bureau of Commercial Fisheries.

Q And you stated that you were in charge of the district. Specifically, were you involved in enforcement and management or—

A I was involved in both. At the time of the split the fish and game agents or fishery game agents who had formerly been the enforcement personnel in charge of

fisheries enforcement also were retained for the most part by the other bureau.

Q By "the other bureau," what do you refer to?

A Bureau of Sport Fish and Wild Life. In those days they were Alaskan game agents. At that time Robert Mahaffey who had been in Bristol Bay was transferred to Cook Inlet. He transferred from the other side to our side and he headed up the enforcement in our area under my supervision. Bob remained with me for about, roughly, a year and a half, two years. He went back to University of Washington and subsequently transferred to Kodiak and was shot and killed.

Q Did you succeed, generally, to the same type of duties with respect to enforcement as Mr. Costello?

A I believe that I perhaps took over more responsibility than Mr. Costello had had. Mr. Costello had had the [6] benefit of the game management agents, primarily. He assisted with them. In our job descriptions as law enforcement officers, we had this responsibility, so that I had the management of the fishery, the biology of the fishery as well as the enforcement of the fishery.

Q All right. And you say you had this responsibility from May of 1955 through August of 1959?

A That is correct. I actually assumed my total responsibilities—Tom stayed on for the summer and departed Anchorage, I believe, in August of 1955. Then, I assumed a full responsibility for the district. Other than that, I had been under Mr. Costello's tutorage up to that point.

Q And you then went through and a little beyond the period of statehood?

A That is correct.

Q Who was your immediate supervisor?

A Howard Baltzo. And then I believe he was succeeded by John Gharrett for a short period of time before Mr. Gharrett became regional director. But Mr. Baltzo was my immediate supervisor. I took all of my instructions from him.

Q Did you, generally, in the day-to-day conduct of your duties look more frequently to Howard Baltzo than to anyone else? Would that be a fair statement?

[7] A I believe that would be a fair statement, yes.

* * * *

[12] Q During the time you were in the Cook Inlet District, were you aware or was there any map, chart, or other written document which defined the areas of your responsibility?

A The only thing that defined the area of responsibility was in the regulations. The area was defined and set out and this is all I had. This we put on a map each year. We had to depict the placement of all the traps on this particular chart. As I recall, the boundaries of the district were drawn in.

Q Now, by "the regulations," you are referring to the regulations promulgated under the 1924 Fisheries Act?

A Part 50, Section 101, I believe.

Q All right. Did you refer to that Act as the White Act, does that—

[13] A The White Act and the regulations drawn pursuant to the White Act.

Q All right. And you relied on the description of the Cook Inlet area as defined by the regulations?

A That is correct.

Q In order to discover the area over which you were to enforce the regulations?

A That is right.

Q Now, you say that there was a map or chart of some type with a line drawn on it defining or depicting the Cook Inlet area?

A It would be hearsay. That is all I could testify to.

Q Right. But, in other words, I am trying to determine if there was such a map in existence, and you apparently believe there was, is that correct?

A I heard of such but I never saw it.

Q I see. You never saw it. Trying to pin that down a little more closely, did you hear of it early in your career in Cook Inlet?

A No. Late.

Q Are you aware or were you told anything about who may have prepared such a document?

A I was told who had been working on it, yes.

[14] Q Who was that?

A Clay Scudder.

Q Do you know anything about the present whereabouts of Mr. Scudder?

A I don't. Mr. Scudder retired while I was in Alaska and the last I knew he was residing in California but this is 15 or 18 years ago, so—

Q What was his duty at the time you were in the Cook Inlet District?

A Clay had had many years in Alaska and he was helping Mr. Baltzo in the day-to-day activities in the regional office. I can't be precise on exactly what his duties were. He was, I know, stationed in Juneau. My association with him was not really on an official basis. I knew him more on a friendly basis. I don't feel that I am qualified to describe precisely what his duties were.

Q Did anybody else of whom you are aware work on the preparation of such a map?

A No. I can't truthfully say that I know definitely for sure. Here again, I understand that John Gharrett, from time to time, worked with Mr. Scudder, but this, again, is only hearsay. I cannot, of my own knowledge, say definitely that I know he did.

* * * *

[16] MR. CRANSTON: I will ask that the reporter mark as Deposition Exhibit 1, United States Coast and Geodetic Survey Chart 8502, 16th Edition, July 4th, 1970, corrected through notice to Mariners 27/70.

(Survey Chart marked Deposition Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q All right, Mr. Skerry, I will hand you what has been marked as Deposition Exhibit 1 and ask if included within the portion of the map available to you is the district in which you had responsibility when you were in Anchorage?

A Yes.

Q And I also take it that you are familiar with the portion of that map upon which the words "Cook Inlet" appear?

A That is correct. I am not familiar with this chart, particularly. We had two other charts we used but this is adequate to show the area of Cook Inlet and its surrounding territories.

Q Now, generally, in regard to your enforcement of the White Act and the regulations promulgated under the White Act with respect to fisheries, exactly what did you do? How [17] did you go about enforcing these laws? I am not talking so much about laws involving stream guards and that sort of thing, but out in the water. What did you do, how did you conduct your activities?

A You are talking, then, primarily about the drift gill net fishery, I assume. Regulations were set up for the drift gill net fishery in that they were only allowed to operate in a stated area. The other fisheries were essentially a close-in-shore fishery. The drift gill net fishery could fish further off shore by the very type of gear it is. The area open to drift gill netting was north of a line drawn from Anchor Point across. In other words, a parallel to a parallel at Boulder Point which is above the East Foreland. So that the drift gill net fishery, then, the only type of mobile gear allowed in that particular part of the Inlet was restricted to those two—actually, it was divided into two areas, North Central and South Central Districts, and commencing about the 15th of May, depending exactly on the date when the fishery was allowed which could be the 25th to the 27th of May, we commenced patrolling it by aircraft, primarily, and if a vessel were available, which it was in the latter years, we used a small 38-foot patrol vessel primarily to see that no fishing was done below the latitude of Anchor Point.

[18] Q Let me stop right there, if I may, Mr. Skerry. What was the purpose in drawing the line at Anchor Point, from Anchor Point to the opposite shore?

A Well, that line had been drawn, I won't say how many years, before I appeared on the scene. It was there when I got there. It was probably done on a biological basis. Below Anchor Point tended to be a general mixing ground for salmon and we were managing

a fishery on a river-system basis, and by fishing intensively below Anchor Point where you had a large mixing area and before fish were starting to head either up the west side or the east side of the Inlet for their home streams, we would have had no opportunity to determine the parent stream for which any particular fish was headed for.

Q In other words, the runs didn't particularly coalesce below that point?

A No, they did not. As I say, it was a tremendous mixing bowl. The fish came in, apparently from our observations of jumping fish, and remained there for a period of time. It was the lower part of the Inlet which was somewhat clear. Cook Inlet, being sediment laden, it is very difficult to see fish at any time. But the lower part of the Inlet was somewhat more clear than the rest. We couldn't follow the movement of fish too readily, and so that when the fish [19] started to move they would move more or less in groups bound for the one or two streams, and if we had let them fish with no regulations below that line, we would have had no stream management whatsoever.

Q You are saying, then, that you did consider it your responsibility to prohibit fishing with any kind of gear in all of the waters south of the Anchor Point line?

A For salmon, correct.

Q For salmon?

A That is correct.

Q All right—

A The only other type of gear, of course, which was permitted were the beach seines but they are strictly a shallow water type of gear and they fish very close in. They did not fish out in the deeper water as you found out here in the middle of the Inlet.

Q Did you patrol the area south of the Anchor Point line in order to determine that the regulation prohibiting fishing was being complied with?

A I did.

Q And over what portion of that area did you patrol?

A I would say that from Chinitna Bay to below Augustine Island, and across to Port Graham and back to [20] Anchor Point. We patrolled that area quite thoroughly. About the only time that the salmon would be close enough to the surface to be caught by a gill net was above that area. Below that area they were in such deep waters that a gill net would not have caught them successfully. So we, therefore, tended to devote most of our patrol time to the area in which fish could be caught. I would judge that for the four or five days prior to an opening we would spend probably the minimum of three to four hours a day patrolling with the aircraft to be sure it was completely free. This is dependent upon the weather, of course.

Q Would you consider it your responsibility in this area to determine that all areas of the Inlet were free irrespective of the distance from shore?

A Remembering that there are personal-use laws in Alaska and use of set nets along the beach were permitted up until a period before the season opened and then they had to be discontinued until the season opened.

Q But principally with respect to drift nets?

A To drift nets, the area we covered primarily would be from shore to shore in the lower portion of the Inlet as I have described it and on up to at least the Forelands. We stopped at the Forelands primarily on account of the tidal [21] bases. It was practically impossible to put a drift net up there.

Q Then, I take it that you did patrol that area even outside the distance three miles from the shore in order to insure compliance with the drift net laws, is that what you testified?

A That is correct.

Q And I believe you also testified, to make the record clear, you considered the area of your control or responsibility the area of Cook Inlet as defined by the regulations?

A That is correct.

Q Do you recall specifically what the southern boundary of the Cook Inlet area was as defined by the regulations? I am not testing your memory.

A Cape Douglas to the Barren Islands to Point Gore.

Q And you considered that entire area within your control or responsibility?

A That is correct.

Q You patrolled the entire area with aircraft and vessels?

A That is correct.

* * * *

[24] Q Can you recall any specific instances where you or persons operating under your supervision made arrests or investigations or some other law enforcement activity with respect to the off-shore salmon fisheries in Cook Inlet?

A No, I do not.

Q You cannot recall any specific instance of any type of enforcement?

A By "off-shore," you are referring now to beyond the line of the Douglas, Barren Islands—

Q No, I am referring to off-shore, meaning distinguishing the set net fish trap type of fishery from the drift net, [25] gill net type of fishery. In other words, within the Cook Inlet District can you recall any specific instance of enforcement with respect to drift netters, gill netters?

A Well, we have had trouble with gill netters, for instance, drifting too close together, if this is what you are referring to, out here in below Kalgin Island and even up along by Kalgin Island. We have investigated alleged fisheries violations in Kamishak Bay by beach seines and around the stream up here at the head of Kamishak Bay.

Q All right, now, you pointed to enforcement against drift netters in the vicinity of Kalgin Island and southerly thereof?

A Correct.

Q Can you recall any specific instances, names involved, of persons whom you may have apprehended?

A I can only recall one particular instance, and I can't recall the names of people involved here in which Mr. Wardleigh and I found a group of gill netters just below Kalgin Island fishing too close together. There was a stated distance the nets had to be apart and these nets had drifted together. So, we put the plane down on the water. It happened to be a calm day. We taxied through the six or seven boats involved and simply told them to haul their gear [26] aboard their boat or to tow it away.

Q Were any arrests made?

A No, I made no arrest at that time.

Q Was Holger Larsen under your supervision?

A No, he was not. Holger Larsen had been in charge of the enforcement prior to my coming there but, as I say, at the time when the two bureaus were formed, the Fish and Wild Life Service was split, Holger Larsen stayed on the other side of the fence and as a game management agent. We then took over the enforcement work which his agents had been doing.

Q Apart from this one instance where you and Wardleigh put the plane down, are there any other specific instances you can recall?

A This is the only specific instance, time that I can recall having done that sort of an action. The other actions where we put the plane down were primarily concerned with set nets on the beach or with traps. We had a patrol boat in the vicinity when the red salmon fishery took place. As a matter of fact, we had two. We brought The Teal in specifically at that time and we had the use of The Grayling, of course, continuously. So that, really, the only time that we may have had any difficulties below Kalgin Island was during the king salmon season which would have been late May or early June. The rest [27] of the time it was a matter of patrolling along the beaches with the skiffs from The Teal and the stream guard at Drift River.

Q Would it be a fair statement to say that the drift netters basically presented you with little enforcement problems?

A I had little or no enforcement problems in particular. It was mostly our presence on the grounds, like

the cop on the beat, that people behaved themselves.

Q Now, can you recall this one instance where you put the plane down was more than three miles from any point of land or not, or would this have made any difference to you?

A This wouldn't have made any difference, I don't believe. I can't recall precisely the exact spot in the Inlet where we did intercept these vessels. I do recall it was just a short distance south of Kalgin Island. That is about as much as I can recollect of the incident.

Q But it could or could not have been more than three miles. You just can't remember?

A I just couldn't precisely tell you.

Q Did you enforce any type of law or regulation or other requirement requiring that persons engaged in the fishery be registered or licensed? Was there any—

[28] A Yes. If you are talking again about the salmon fishery, in about 1957 a law was required that each vessel owner or company owner of a vessel to denote which district they were going to fish in and we issued them plates accordingly. And we managed the fishery on the amount of gear that was actually fishing, whether it was traps, set nets or drift gill nets.

Q Are you saying that if a person were to engage in the salmon fishery he would have to decide among all of the districts in Alaska which district he wanted to fish in for that particular season?

A Yes. Well, too much pulse fishing. In other words, fishermen going from area to area to area subjecting the fishery to too much gear and we had to do something to stop this pulse fishing, and it seemed one of the best ways we could determine at this time was to have the fishermen choose an area in which he wished to fish and remain there for the remainder of the year unless there was some hardship case or the utter and complete failure of a fishery so that a man's livehood was completely lost. Then, he was given the opportunity through procedures set up to move to another district.

Q Now, could any number of individuals register, say, for instance, to fish the Cook Inlet District or was there

a [29] number of persons beyond which you would not allow further registration?

A Anybody who wanted to fish could come there and fish. We did not attempt to stop anybody. When they were all done registering, then we added up the amount of gear and then told them how many days they could fish. In other words, the amount of fishing time was set, depending upon the amount of gear used to fish.

Q Would you have required, for instance, if a foreign vessel wanted to fish Cook Inlet with gear, would they have been required, also, to register?

A He wouldn't have been allowed in there in the first place. He could have come in Force Majeure or something of this sort. But to fish, no.

Q What is the basis upon which you make that statement?

A Well, to my knowledge, there is no law that I can recall precisely, but foreign vessels were not permitted to fish in the lines as drawn on this—set out in the regulations. In other words, we considered that that was Cook Inlet and it was for American fishermen.

Q All right. So, you are saying that in regard to this registration map, had they applied for a—did you call [30] this a license or how did you refer to it?

A I think we called it a registration. I am not sure. Registration.

Q Had a foreigner applied for a registration you would not have given it to him because he could not have fished there under any circumstances?

A In the first place, I wouldn't have said yes or no to him. I would have referred that question to Juneau and let them make that decision. It would have been an international affair and I don't think that I would have wanted to have been drawn into something like that at that time.

Q But it was your impression that they could not have fished there, is that correct?

A That is correct.

Q With respect to foreign fishing, were you aware or during the time you were on the Cook Inlet District, did any foreign fishing vessels appear on the scene?

A Not to my knowledge. I can't state categorically that I knew some vessels of foreign registry who were fishing in the waters of Cook Inlet.

Q You say you can't state?

A I cannot.

Q I take it, then, that you are not aware that any did [31] at any time when you were there?

A I can't recall. I think what you are perhaps thinking about is the possible if some Canadian long liners were fishing for halibut. I have no knowledge that any Canadian long liners did, in fact, fish in the Cook Inlet area. I know they came in Force Majeure as any other vessel is permitted to do. To fish, I can't say.

Q What do you refer to when you speak of Force Majeure?

A I am talking about conditions of storm and wind, when winds get to 60 knots or more.

Q In other words, it is something where the vessel is in peril and has to come in to shore for its physical safety?

A Right.

Q When you took over, then, I take it that you were not given any instruction by Mr. Costello or anyone else with respect to what procedures were to be followed if a foreign vessel should appear fishing in Cook Inlet?

A I can't recall any procedure being given to me either verbally or in writing. If there were any, I would judge that I would immediately refer the question to the regional office in Juneau.

Q But then to your knowledge, there was no firm decision which had been reached on the point?

[32] A Not to my personal knowledge, no.

Q Were you ever told by anyone that Howard Baltzo had made a decision relative to this point?

A No.

Q Involving foreign fishermen?

A No.

Q Did Mr. Swanson or Mr. Ralston ever communicate to you any instructions on this?

A No, I was never under their jurisdiction.

Q I see. What were their responsibilities when you were in the Cook Inlet District?

A Here, again, they were in charge of the game management agents stationed in Juneau and I believe that Dan Ralston was the assistant regional director with Clarence Rhode at that particular time.

Q If any decision on this point had been reached, would it most likely have been communicated to you from Howard Baltzo?

A I think this would be the way it would have come down. In other words, it would have been formulated by Mr. McKernan and his staff and Mr. Baltzo as my supervisor would have referred it to my attention.

Q I take it, then, you are not aware that any [33] Japanese vessel ever appeared in Cook Inlet? You have no knowledge of such?

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EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

Q Mr. Skerry, this is cross-examination. I only have one or two questions to ask you. The first question is when you have your agents in the field, say, in an aircraft, patrolling, can they communicate directly with people in Anchorage and in Juneau—

A Yes.

Q —if they had any questions?

A We had two frequencies we used. If we were blocked for some reason from going through directly we could go through the station at the hangar through a relay.

Q Hangar located—

A At Anchorage; our hangar headquarters. And they could communicate directly by radio. Or if something prevented that, why of course, then, they could telephone. So we had [34] communications from the aircraft.

Q I am right in saying you had direct communication to Anchorage and the Juneau?

A That is correct.

Q If a pilot on patrol saw foreign vessels fishing in Cook Inlet beyond three miles what would he do?

MR. CRANSTON: I will enter an objection. There is no evidence in his direct testimony that such a vessel had ever been seen in Cook Inlet.

MR. RASHKOW: Answer the question, please.

THE WITNESS: Could I have the question re-read.

(The question was read.)

THE WITNESS: He would have done one of two things; he would have either communicated directly to me at Anchorage, if I were there, or in my absence would have directed his communication directly to the regional office in Juneau which I would ultimately have had to do, also.

* * * *

[2] THERON A. SMITH

having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Mr. Smith, would you state your full name, please and your residence address?

A Theron A. Smith, 1500 West 30th Place, Anchorage, Alaska.

Q And what is your date of birth?

A August 11, 1918.

Q What is your present occupation?

A I'm supervisor of aircraft operations, Fish and Wildlife Service.

Q That's for the United States Government?

A That's right.

Q And how long have you been engaged in this particular position?

A Since November of 1948.

Q And always with this same title?

A Yes, sir. Well, the title has changed subtly, but the job has remained the same.

* * * *

[4] Q All right. Generally, with regard to your occupation since '48 up to the present time, what has been the area, geographically, with which you are concerned?

A In my job, I'm concerned with the whole State of Alaska. I manage the fleet, I fly throughout Alaska. I'm responsible for pilot proficiency, aircraft maintenance, for the [5] operation of what we call fish and wildlife aircraft.

Q And have you had the responsibility for the entire state, or the territory before statehood, since '48?

A That's correct.

Q And in regard to these responsibilities, has anyone under you been particularly responsible for what we would broadly define as the Cook Inlet area?

A We employed various pilots and assigned them to operate in various districts, but this is a flexible assignment, they might be assigned for a brief period, or for years or more. No pilot had a district responsibility beyond transportation or beyond flying in the district, and he might be replaced by another pilot.

Q What do you mean, "had no responsibility beyond transportation"?

A Well, our aircraft operation is a transportation function of the service. We manage the operation of the aircraft, we train the pilots who may or may not be division pilots, they may be agents or biologists, and we fly the aircraft for these people.

Q I see. Now, have you flown the aircraft yourself—

A Yes.

Q —at times? Do you do it all the time or—

A Yes, quite consistently. In a general way, you might say that in the earlier history of the operation, I flew a lot [6] more than I did during, say, the period immediately before statehood when we were a larger organization and more organized, more pilots. Following statehood, I again flew a considerable amount because of reduction in our people.

Q Now, prior to statehood when you were flying, where did you fly, generally?

A More in this area, more in the—you might say the Cook Inlet or southcentral coast district than in other parts of Alaska, although I did fly in all parts.

Q Taking the period from 1948 up through statehood, how would you characterize the intensity of your flying, that is, how often, generally, were you out flying in the areas of your responsibility?

A I would say—

Q Was it weekly, monthly?

A No, it would be almost daily, several times a week on the average, probably four days a week, on the average.

Q I see, and this is week in and week out from '48 through statehood, you would say?

A Yes.

Q All right.

A It would vary some from time to time. There were periods when I would fly every day, weekends and all, all summer long, essentially.

Q All right, now, as best as you can, what percent of this [7] flying that you did, say, four days a week, or so, what percent was done in the Cook Inlet district? Would you say more than half?

A I believe so. I probably flew more fishery patrols for more Cook Inlet activities or coastwise activities than otherwise, because I would normally fly a Grumman, and the Grummans were more on this work. We had single engine equipment and this sort of thing. The interior operations would be conducted more with single engine aircraft. Our coastwise and fisheries work was more with Grummans, and of course, the higher percentage of my flying was these Grummans.

Q I see. Now, so you did most of your flying in the coastwise and fisheries areas, is that correct?

A More than half, I'd say.

Q All right. Now, when you speak of coastwise and fisheries, what areas there did you fly, what districts?

A It would be mainly what you would consider this district, and it would be, say, from Seward to Cape Douglas or Northern Shelikof area and Cook Inlet.

Q Now, by "this district," what do you refer to?

A I don't know how the fishery district—or how the thing is legally divided up, but we had aircraft stationed at Cordova, for instance, at Kodiak, at Anchorage, King Salmon, and at times at Sand Point or Chignik, and these aircraft would [8] generally operate in an area within reasonable radius of where they were based.

Q Now, for, say, flying the area of lower Cook Inlet, where would the aircraft be based?

A Here at Anchorage.

Q At Anchorage. And would you say that of the flights which you made in the fisheries aspect of your duties, were most of your flights originating in Anchorage, or were they originating elsewhere?

A They would originate here for the most part. We would remain overnight in Seldovia, or possibly in Seward, Homer, occasionally, but the aircraft was based here, the operation was based here.

Q I see. And again, when you speak of the "operation," this was the operation of which you were the supervisor, is that correct?

A Right, and essentially the base of the people we were transporting, the agents.

Q All right. Now, when you speak of transporting agents, do you mean that you transported them from Anchorage to some other locality where they would be stationed, or you transported them in the airplane in order that they could observe the fishing activities in the area?

A It was primarily patrol, although there was a defense part. In other words, we transported them to a great extent for [9] visual patrol.

Q I see. In other words, a flight would originate in Anchorage, you would transport them on this flight, and you would terminate, say, in Anchorage, perhaps?

A That's right.

• • • •

[10] Q Was Howard Baltzo his deputy at any time during your service here?

A Yes, he was.

Q Did you ever take instructions, or look to Mr. Baltzo for direction?

A Yes. I don't remember specific instances, but he was the assistant regional director, I believe was the title. In other words, he was Rhode's immediate assistant, and I'm sure we have correspondence and various other things with his name on them, and he was the regional office, as far as we were concerned.

* * * *

[23] Q During your period of operation in this area since 1948, have you become at all acquainted—and I'm dealing with prior to statehood—were you acquainted at all with the fishery laws which were in existence prior to statehood, that is, the federal fishery laws, and their provisions, as they would apply in Alaska?

A I was aware of this to a certain extent due to association with the management-enforcement people, but I recall nothing of the details in a—

Q Did you ever make any independent study of these laws yourself?

A No.

Q And did you ever have any instruction in them?

A Very minor instruction, you might say.

Q What would that have consisted of?

A Oh, just explaining the generalities of the law, possibly.

Q You mean one of the enforcement officers would have instructed you as to the generalities in the law?

A Yes. We would have annual get-togethers in Fish and Wildlife, and there would be certain, you might say, discussions concerning this where we might all be present.

Q These would have been informal discussions or formal [24] discussions?

A Well, they'd be formal for the agents and so forth, and the rest of us would be—would sit in, but this was not our field, and we—not my field, I mean. I had my hands full transporting these people.

Q All right. Did you, yourself, ever sit down and read the regulations or the laws which may have applied—

A No.

Q —in regard to fisheries?

A No.

Q And did you, yourself, ever try to determine, by yourself, or in your own mind, for any violations which may be occurring?

A No. We didn't operate independently.

Q In other words, you always generally, when you were flying, is it fair to say, you were always flying in the company of either an enforcement officer or biologist that you were transporting?

A That's correct.

Q And you simply relied on what that person you were transporting was supposed to do, and did nothing independent in regard to enforcement on your own?

A That's right.

Q In any of the discussions which you had with enforcement personnel or any other personnel of the federal government [25] prior to statehood, did the matter of the area over which enforcement was to be carried out, was that matter ever discussed?

A I'm not sure.

Q Well, did it ever enter into any of your discussions, say, in regard to Cook Inlet, the areas of Cook Inlet over which the fishery laws and regulations of the United States were expected to be enforced, or were, in fact, enforced?

A No, not to my knowledge. In our mind, the area were the areas of operation of the aircraft, and we could operate across areas that might have different basic regulations and this sort of thing, but I would not know this.

Q Did you ever discsus with anybody else the matter of enforcement of fishery laws and regulations in any part of Cook Inlet?

A Well, I'm sure we did at times, but I can't recall any specifics.

Q Were any charts, maps, documents or any other kind of written material ever given you, or did you ever see any such material defining the areas in Cook Inlet over which fishery laws were to be enforced?

A I don't recall specifically any maps or charts or information that would be specific. I mean, we naturally

had all manner of charts and things, the fishery people had charts and so on aboard.

[26] Q But nothing you're aware of which specifically defined the territorial jurisdiction of the United States in Cook Inlet?

A That's correct.

Q Did you ever receive any written communicaiton or send any written communication on this subject?

A No.

MR. CRANSTON: Let's go off the record just for a minute.

(Off the record.)

MR. CRANSTON: Would you mark this (indicating) document, C & GS chart 8502, 16th edition, July 4th, 1970, corrected through NM 27-70, as Deposition Exhibit 1, please?

(Deposition Exhibit 1 marked.)

BY MR. CRANSTON:

Q Mr. Smith, I'm going to hand you Deposition Exhibit 1, which is, as I said, U. S. Coast and Geodetic Survey Chart, and ask you if the area of Cook Inlet as set forth in that map is one of the area over which you have and did have territorial responsibility?

A Yes.

Q And generally relating to geographical features as shown on Deposition Exhibit 1, would you indicate where within the confines of the Cook Inlet district you patrolled your aircraft, particularly with regard—I'm not interested in [27] Prince William Sound or that area, but generally in the areas of the Kenai Peninsula and lower Cook Inlet—where did you transport?

A We normally operated throughout the entire Cook Inlet, and possibly or generally in the neighborhood of Cape Douglas in the southwest, and we went coastwise to Resurrection Bay and somewhat eastward.

Q I see. Now, did you carry enforcement personnel on any of your aircraft in the area between Cape Douglas and either Cape Elizabeth or Point Gore?

A Let me determine for sure where Point Gore is, now—yes.

Q And were you ever personally involved in any flights in that area where enforcement personnel were present?

A Yes.

Q And what were the areas, say, in the general area between Point Gore, Cape Elizabeth on one side, and Cape Douglas in the area in which the enforcement personnel were interested? I mean when were they observant?

A To the best of my knowledge, they were observant all the time in the total coastal water area.

Q Well, now, when you're speaking of "coastal water area," did you or anyone with whom you are familiar consider the waters between Point Gore or Cape Elizabeth on one side, and Cape Douglas on the other, as the coastal water area? Did you treat that, say, as the coastline?

[28] A I don't know. Could I enlarge on that just a little bit?

Q Yes, you may.

A As far as I can recall, and as I am concerned in my part of this, that the whole water areas of Cook Inlet and to some distance offshore along the outside coast and so on, were the same, I mean you patrolled them the same. I don't know if the agents were looking for any different things in different areas.

Q But you would say you patrolled the area midway, say, from a line between Point Gore and Cape Douglas, and say midway up the inlet to Anchor Point and beyond, just as you would have patrolled the shoreline on the south and east sides of the Kenai Peninsula to Resurrection Bay?

A To the best of my knowledge.

Q Generally, when you were patrolling on the south and west sides of the Kenai Peninsula, did the aircraft stay relatively close to the shoreline?

A It would depend on what we were looking at, I mean if we were looking at set nets, we would be right on the shore. If we were looking at drift boats or any

other ships or anything, we would be over where they were.

Q And where would they be? And again, refer to that map with specific reference to geographical features, if you can. This aids the transcription of the deposition, so we know what you're talking about.

[29] A I can't say in any general way, except that the ships were further offshore than the nets, as far as—

Q Now, what do you mean by that?

A Well, the nets were attached to the shore. As I remember, we had two kinds of gear which we were looking at, either drift boats or various other boats. We looked at boats, and generally, we looked at any boat that we saw, we identified it. We were involved with looking at any vessel traffic and at set nets, generally.

Q And drift nets, you say?

A Well, drift nets would be attached to ships.

Q I see. Can you recall specifically whether there was any active drift net fishery in an area, let's say, to the east of the Chugach and the Barren Islands, as disclosed on this chart, and south of the shoreline of the Kenai Peninsula?

A I think generally not, or—I would say generally not.

Q So is it fair to say, then, that most of your patrols would have been in that area east of the Chugach and Barren Islands and south of the Kenai Peninsula closer to shore than in the Cook Inlet side of the peninsula?

A Yes, I believe it was normal for the drifters that's on the fish in the bays.

Q All right. Now, generally, if you can remember from your flights in that area, where were the drift net fisheries conducted in the Cook Inlet area, where did you observe most [30] of the drift net fishery?

A As I recall, they would be more south of Kalgin Island.

Q And where in relation to the shoreline?

A Not close to shore. I don't know how close. I think there was some prohibition against them getting very close to shore.

Q Would they have been, say, do you recall any towards the middle of the inlet?

A Yes.

Q And what was the southern limit, as far as you can recall, of the drift net fishery, if you can remember?

A Oh, possibly somewhere west of Port Graham or Seldovia.

Q West of Seldovia?

A Well, I don't recall for sure. We would pick up ships in various locations at times, whether or not they were fishing. By this I mean we would sight them and look at them.

Q Now, when you were involved in transporting enforcement or other personnel over the area of Cook Inlet —let's take north of a line from Cape Douglas through Point Gore on the Barren Islands, did you observe any halibut fishery?

A I don't recall.

Q Could you, from your own experience, distinguish a drift net fishing vessel that was engaged in the salmon fishery from one engaged in the halibut fishery?

A I used to be able to tell the difference.

[31] Q Well, could you have told the difference in the period from 1948 through statehood?

A Yes.

Q And can you remember if you saw or observed any halibut boats in that area of Cook Inlet?

A I can't remember specifically.

Q You can't remember any specific instance?

A No.

Q This isn't to say there weren't any, you just can't remember whether there were or not?

A I wouldn't be able to say whether there were or were not any.

Q All right. But you can remember specific instances where you saw drift netters in that general area?

A Yes. They work the majority of the ships in the south.

Q Now, I know I'm pressing you a little hard in maybe touching your memory, but what was the farthest south that you can remember ever having seen a drift net boat?

A I have no good recollection of the line or anything.

Q But as you said it earlier, you could have seen one as far south as Selvodia?

A Yes, and I think possibly even a little further south, even, but I can't say for sure.

* * * *

[36] Q Okay. Is it a fair statement, and if it isn't fair, be certain to tell me that it isn't, that you did participate in apprehension of vessels, that is, participate in transporting enforcement officers in apprehensions of vessels even in the inlet more than three miles offshore south of Anchor Point?

A You mean to be specific that we did apprehend vessels south of Anchor Point more than three miles offshore?

Q Yes.

A I can't be that specific. I think so, but I can't say for sure.

* * * *

Q And you described an incident with Dale Cheek whereby you thought perhaps a packer ship had come into the inlet and Holgar Larsen was involved?

A Yes, we were talking about the same incident.

Q All right. When you were talking about this with Mr. Cheek, did you use as a reference point Anchor Point?

A I don't recall if I did.

Q I see. Can you recall specifically what you told Mr. Cheek concerning this incident?

A No, except I believe I told him that I had put Holgar Larsen aboard a large—in the inlet. I don't remember even what year it was, or anything, as far as that goes. As I mentioned, I remember this specifically because of the difficult circumstances of the airplane.

Q And do you remember enough to feel that this event could have taken place south of Kalgin Island rather than north of Kalgin Island?

A I couldn't swear to that, but I think it was north of Kalgin Island.

* * * *

[39] Q During your acivities prior to statehood, and again, limiting your area of concern at this point to a line from Cape Douglas through the Barren Islands to Cape Elizabeth or Point Gore, do you remember having seen any foreign fishing vessels, by foreign, I mean flying a foreign flag, anything of this sort, foreign fishing vessels in Cook Inlet north of that line which I described?

A My memory would be possibly unreliable, but I think we did see Canadian halibut ships.

Q All right, these would have been Canadian halibut ships?

A Whether or not they were fishing or what, I don't know, but [40] I think we occasionally saw Canadian ships.

Q And can you specifically remember enough about the events as to where you might have seen them?

A No, I can only recall that I think we saw Canadian ships at times.

Q Can you be certain of this?

A No, I couldn't.

Q I see. Can you recall that any of the personnel whom you were flying made any particular comment to you as to the existence of any foreign fishing vessels in Cook Inlet?

A No.

Q If you were to try to estimate—again, I'm not just putting you through a memory test, but we're trying to get at some facts that may not have been very well recorded at the time—if you were trying to estimate the number of times you remember having seen a Canadian halibut boat, could you make a rough estimate?

A All I could say was I think sightings would be rare. We were involved, I think, for the most part with nationls.

Q And by such sightings being rare, would you say it was less frequent than one a year over your averaging from 1948 through statehood?

A It would be difficult putting a number on this.

Q Well, by rare, I would assume that it means at least less frequent than, say, once a week?

[41] A Yes.

Q Or once a month, even?

A All I can say is that vaguely I remember, or think I remember, that we occasionally saw Canadian ships.

Q Do you think you saw them as frequently as once a year?

A Possibly not.

Q Was it such a rare occurrence, do you think that if one had been sighted that a note would have been made on some record somewhere by someone, about it?

A I think so.

* * * *

[42] Q Let me ask you this: If this had happened, would it have been an occurrence of enough significance that you would have entered it on your flight card, that is, if a foreign vessel, you'd actually participated in the apprehension in some way of a foreign vessel?

A Probably wouldn't have noted it except to note a landing.

Q All right. I get through this mainly that your procedure when you make out these flight cards, even if it had been a very significant event, so far as from an enforcement agent standpoint, again, all you would have noted would have been the landing and the takeoff, because this is the area with which you are concerned?

A That's right.

Q In fact, you could have noted a Russian submarine going up there and landed and stopped, and you probably would have noted the landing and takeoff, and that would have been it?

A Yes.

* * * *

[44] Q Do you recall any discussion with Mr. Baltzo concerning the possible existence of a Canadian vessel in Cook Inlet?

A No. I don't remember discussing any specific cases or ships or any—I can't remember discussing anything with Baltzo except aircraft policies or aircraft operation details, or things like this.

Q You didn't discuss the sightings of any particular vessels [45] with him?

A Not that I can remember.

Q Did you discuss the instance that you're referring to which you stated in this deposition occurred north of Kalgin Island, with the difficult takeoff, did you discuss that incident with Mr. Baltzo?

A I can't recall.

Q You say Holgar Larsen was with you in that event. Would he have discussed this with Mr. Baltzo. Would he have been in radio contact during this time with Mr. Baltzo?

A I'm sure that he would have discussed this with someone.

Q By someone, do you mean someone in Juneau?

A I believe so. All I recall is that there was some concern about this ship. I mean that's one of the reasons that there was a certain amount of risk-taking in getting to it.

MR. CHARNEY: I'd like to state an objection to this. I know that it is a discovery deposition but it is testimony as to anxiety about this ship, I think that's hearsay.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q Are there any other instances that you can recall when you did land in Cook Inlet anywhere as it's set forth on that map in Cook Inlet, and the enforcement agent aboard discussed the situation with Junean?

A No. I can't be sure that this other landing resulted in a [46] discussion with Juneau.

Q Well, now, by your answer, "No," do you mean that in all other landings which you participated in involving the apprehension of a vessel, that the situation then at hand was not discussed with Juneau?

A I can't say how much discussion there might have been with Juneau, or with higher authority in enforcement on any case.

Q Well, by discussion, I mean there at the scene with your or someone else's radio equipment.

A I don't know. We talked to various base stations and to vessels all the time. I don't know. I don't recall any specific urgency, even with this other landing. I

can't remember that we talked to Juneau specifically on the radio or any such thing.

Q Did you keep a radio log?

A No.

Q Was there any way in which radio communication between your craft and other places was noted in any kind of log other than—

A Yes, stations maintained a log. This is a requirement that we accomplished although it's a very short-term log. I guess it's discarded in a matter of weeks.

Q What do you mean by a "station"?

A Any ground station that we would operate, such as our [47] Anchorage base station, our Juneau station, our Kodiak station, any base station.

Q But your planes were not considered a station at this point, is that correct?

A No, it's not required, not common to log any radio traffic in an airplane.

Q I see. And the logs of the ground stations, you say, are discarded almost immediately, you wouldn't have any logs back prior to statehood?

A We certainly wouldn't on aircraft. I doubt that these would exist because there's no requirement.

Q Okay. Have you ever discussed—well, let me go back to one other question: Are you familiar with any instances in Shelikof Strait involving the apprehension of a Canadian halibut vessel sometime from the early through mid-'50's?

MR. CHARNEY: I object to this as being irrelevant.

MR. CRANSTON: He hasn't told you you can't answer this.

A I don't know. I don't have any recollection of it.

BY MR. CRANSTON:

Q Did you ever carry personnel down into Shelikof Straits?

A Not particularly. We might—I think the southern line on our patrols would vary. I think our patrols were geared to what the activity was.

Q But you cannot recall any instance of a Canadian halibut boat being apprehended in the 1950's in Shelikof Strait?

[48] A No.

Q Do you know a man by the name of McKinley, were you familiar with him, an enforcement officer?

A No.

Q Or did you know Howard Marks, are you acquainted with him?

A I know the name, is all.

Q I see. But you never discussed with a man by the name of McKinley or Howard Marks any incident involving a Canadian vessel in Shelikof Strait?

A Not to my knowledge.

Q Or Jim Branson, did you ever discuss it with him?

A I can't ever recall discussing such with Branson.

Q Okay. Have you ever discussed the status of the area of Cook Inlet north of a line from Cape Douglas through the Barren Islands and on to Point Gore or Cape Elizabeth? Have you ever discussed the status of that area as to territory or jurisdiction of the United States with anyone?

A I believe not.

Q You believe not? Is it possible that you have?

A That's hard to say. A lot of things come up in conversation. I don't know.

Q Well, can you remember specifically any time that you may have discussed this with anyone?

A No.

Q I see. And conversely, then, I suppose it's fair to say, [49] or is it, that no one has ever discussed it with you?

A I can't be sure of that.

* * * *

[2] EARL SOLIE,

called as a witness by and on behalf of the defendant, having been first duly sworn by the notary public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?
A Earl Solie.
Q What is your address, Mr. Solie?
A 1752 Ventura Drive, Tacoma, Washington.
Q What is your age?
[3] A 45.
Q What is your occupation?
A Elementary school principal.
Q How long have you been engaged in that occupation?
A 22 years.
Q Have you ever been engaged in the occupation of commercial fisherman?
A Yes.
Q Have you ever engaged in this occupation, in Cook Inlet, Alaska?
A Yes, I have.
Q When did you commence fishing, commercially, in Cook Inlet?
A From the best records I can come up with, it would be 1951.
Q Have you fished, there, since 1951?
A Yes; almost consistently, with the exception of two years off, when I was going to school, and two or three years, in the army.
Q What period of the year do you fish, in Cook Inlet?
A Every summer, from June and through July and August.
Q Are you interested in any particular fishery, there?
A An organization you are referring to, as a fishery?
Q No. What type of fishing?
A Oh, all right. Commercial salmon fishing.
[4] Q And with what type of gear?
A Drift gill net.
Q How is the drift gill net fishery carried on; what do you do and what means do you use?

A We are allowed to put our net into the water and then we drift more or less with the tide and the weather. In other words, the wind may be prevalent and make us go east and west, contrary to where we may wish to go. The Inlet, we will say, is north and south and as the tide goes south, we go south, and as the tide goes north, we go north.
Q With relationship to the shore line of Cook Inlet, where is this fishery carried on or where do you fish?
A Generally, in the center of Cook Inlet. I am saying from the east to west shores, we are generally in the center. We call it the center rip and that is predominant. When the season varies, we will fish the east rip or the west rip or we will go on the west side of Calgin Island, on the bar, depending on what the fish are doing, at that time.
Q Have you ever fished south of Calgin Island?
A Yes, I have.
Q How far south of Calgin Island do you fish?
A We have a boundary line, between Anchor Point, and a point which is off Chinitna Bay. The Fish & Wildlife [5] Service establishes a line.
Q While you have been engaged in your fishing activities, in Cook Inlet, have you ever been apprehended or in any way met by anyone, for an alleged violation?
A Yes.
Q When was that?
A In the early 1950's. This year, looking back for 20 years, it is difficult to know whether it was 1951, 1952 or 1953.
Q I see. But you do remember an incident?
A Yes.
Q For whom were you fishing, when this incident took place?
A If I must set a date, as to when I was arrested, I would say it would be 1951, as close as I can recall; because, in fact, I graduated in the year 1951, from college, and I was still a student. We were fishing, at that time, for Parks Canning Company, of Kodiak Island.
Q Do you think this would have been the first year that you fished, in Cook Inlet?

A Yes.

MR. CRANSTON: I would ask that the reporter mark, for identification, as Defendant's Exhibit 1, Chart number 8502, of the U.S. Coast & Geodetic Survey [6] the 16th Edition, July 4, 1970 (corrected through Notice to Mariners 27/70).

(Document marked as Defendant's Exhibit 1, for identification.)

Q Mr. Solie, I am going to hand you what has been marked as Defendant's Exhibit 1 and ask you if the portion of the exhibit, depicted thereon as Cook Inlet, includes the area which you fished in commercially?

A Yes, it does.

Q With respect to the incident, to which you testified, I am going to give you a red marking pen and ask you, as best you can, to indicate on that chart the point at which you were arrested?

A A point or a general area?

Q Well, as best you can, will you describe the area?

A (Witness draws circle).

Q You have placed a red circle, on the map, surrounding the L and the E, in the word Inlet, and that is the area which you would indicate as being that in which this incident took place?

A Yes.

Q Do you recall the type of official, who apprehended you, and from what agency, if any, he may have been?

A He identified himself as being from the United States Fish & Wildlife Service. He was in a small 12-foot or [7] 15-foot skiff with an outboard motor. He came alongside and said that we were illegally fishing and asked if he could come aboard. He took our names and whatnot, at that time.

Q Were you directed to do anything or to go anywhere?

A Yes. We were to report to a lawyer, and I don't know his name, at Kenai, the next day, for this violation.

Q Did you go to Kenai?

A Yes, I did.

Q What took place, when you went to Kenai?

A As far as myself?

Q Yes?

A My father, myself and two other gentlemen were on our boat and we did report to this lawyer's little office, in Kenai, the older part of Kenai. He asked us if we were guilty or not guilty. I said we were not, but we were. I explained the tide situation and whatnot. Then he insisted that we say whether we were guilty or innocent, and I said not guilty. I asked for time, if I needed to get a lawyer to argue the point, because I felt there was enough, on both sides of the question, that should be brought forth, and I wasn't going to just say I was guilty on it. At the end of the discussion, he let us off.

Q Was the alleged violation that you were too close to [8] another vessel?

A Yes.

MR. BRADLEY: I object to that as being a leading question.

BY MR. CRANSTON:

Q Would you state what the alleged violation was; what were you charged with?

A We were supposed to be a certain amount of distance between boats, when we let our gear out; and this way, you guarantee the fish a chance of escapement, by not cluttering up an area. So when we lay out net out, we try to stay apart. There is a tide rip, that runs down the center of the Inlet, here, and we were on one side of it. It kind of tends to suck you toward the center, sometimes; and sometimes you just lay there. But it runs; it moves. As we were on one side of the tide rip, I believe we were at that time moving north; and the other boats were on the other side of the Inlet and they were moving south. We were drifting north, this way, at the time the man was on our boat.

Q Toward Calgin Island?

A Right. As a result, he stayed on our boat. Two other boats went on the other side of the rip, traveling south. Yet, they were so close, by the time he got off the boat and took all of the information, we were [9]

so far away from everybody that there was nobody in this area, to say we were fishing illegal.

Q To what would you attribute the cause of your being too close to that vessel, if you were?

A Simply the tide.

Q Then you did say that the final disposition of the case was what?

MR. BRADLEY: I object to the answer, on the basis of hearsay.

A It was dismissed.

BY MR. CRANSTON:

Q What was the final disposition of the case?

A It was dismissed. He said, "I will let you go, this time," or whatever was said.

Q And it was dismissed, after you spoke to the lawyer?

A As far as I know, yes. I later tried to get into the Army security agency, and I reported this as being arrested and they could find no record of it.

MR. CRANSTON: I have no further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

Q Were you, at the time of this arrest, a United States citizen?

A Yes.

[10] Q Was your vessel a United States registered vessel?

A Yes.

Q Was it your boat; did it belong to you?

A To my father and I, yes.

Q Was it moored, in the United States?

A Yes.

Q Was your father the captain of the vessel?

A Yes.

Q Was he a United States citizen?

A Yes.

Q You did not actually pay a fine, for the charges that were levied against you?

A That's correct.

Q Have you fished Cook Inlet, on a regular basis, since 1951?

A Yes, I have.

Q Is that every summer?

A With the exception that I went to school or was in the army, correct; in fact, I got an early dismissal from the army, three months early, to go up to Alaska to fish.

Q During this time, did you often see enforcement agents, in Cook Inlet?

A No.

Q In the last ten years, can you give me an indication of [11] how many times you saw enforcement activity or agents, in Cook Inlet?

A 1971.

• • • •

[2] The Deponent, WILLIAM T. STUDDERT, was called forward to the witness stand, and, he being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name, please?

A W. T. Studdert.

Q And what is your residence, Mr. Studdert?

A At Philipsburg, Montana.

Q I see—

A Or here, either one.

Q "here" being Anaconda, Montana?

A Yes.

Q And at what address?

[3] A 421 Chestnut.

Q Now, are you presently employed in any capacity, Mr. Studdert?

A Well, I have been kind of sickly for awhile, with heart trouble.

Q I see—
A But I have a ranch out here that keeps me going plenty good.
Q You own a ranch out in the valley?
A Yes sir.
Q What is your present age?
A I was born in '95.
Q 1895?
A Yes.
Q So are you 75 years old now?
A Well, yes, 75, I believe, or is it—
Q That's close enough—
A No, 76, I believe.
Q That's close enough—
A OK—
Q Now, going back a few years, Mr. Studdert, were you ever employed in any capacity by the United States Government in the Cook Inlet area of Alaska?
A I was, yes.
Q And was that—
A All over Alaska, in fact.
Q All right, but specifically relative to your employment in the Cook Inlet area, what was your position, and what were you to do?
A Well, I was kind of a fish warden.
Q You were a fish warden?
A Yes, kind of a fish warden.
Q And for what branch of the United States Government were you employed?
A The Bureau of Fisheries.
Q All right—
A Washington, D.C.
Q And who employed you in this capacity?
A Henry O'Malley.
Q And who was Henry O'Malley?
A He was Fish Commissioner.
Q Henry O'Malley was Fish Commissioner?
A At that time he was, yes.
Q Was he in charge of this bureau?
A Yes, of all of the bureaus. He was in charge of the Bureau of Fisheries, and the various bureaus—

Q All right, and—
A Well, I think there was just one Bureau of Fisheries, and I believe that would catch it all.
Q And where did he reside?
A Washington, D.C.
Q Now, did Mr. O'Malley give you any instructions when he hired you as to what you were supposed to do up there in Alaska?
A You mean up there in Alaska?
Q Yes, when you were working for him?
A Well, we talked it over, naturally, and he would give me instructions.
Q And generally what was it that he told you, you were supposed to come up to Alaska and do?
[5] A When I came up to Alaska, you mean?
Q Yes, in the Cook Inlet area?
A Enforce the law.
Q I see. And to "enforce the law" in respect to what, Mr. Studdert?
A Oh, for fish traps, and violations, and for seining, and for violations in the use of fish traps and seining, and so on and so forth.
Q I see—
A Any violations, oh, the blockade of streams, or preventing of fish from getting up to spawn.
Q Now, were you concerned principally with the area around Cook Inlet?
A At that time, yes.
Q I see. Can you recall about the time when Mr. O'Malley hired you to come up to Cook Inlet?
A Well, that has been quite a ways back. I don't know that I can remember.
Q Would it have been sometime around the year 1924, Mr. Studdert?
A In that neighborhood, yes.
Q I see. All right. Do you have any recollection of how long you worked under Mr. O'Malley in the Cook Inlet area?
A Oh—
Q How many years?

A I think two years, maybe, in and around Cook Inlet, and then maybe two or three other years out of Washington.

Q I see. Now, were there any other people who were, oh, [6] say, who were enforcement wardens, such as yourself, when you were in the Cook Inlet area, or were you the only one?

A Yes I was the only one.

Q You were the only one?

A Yes

Q All right. And was there anybody, oh, say in Alaska such as—well, we know that Anchorage wasn't very much of a place at that time, but was there anybody who was in direct supervision of your activities in Alaska?

A No, I don't think there was, you know, outside of O'Malley, and I would wire him if I got stuck.

Q You would wire O'Malley?

A Yes.

Q In other words, you dealt chiefly with O'Malley?

A That's right.

Q And with no one else in the Territory of Alaska at that time?

A That's right. Well, there was Dr. Gilbert also, who was down there at some university in California, and he was head ichthyologist, and there was also Dr. Willis H. Rich, they were both professors in zoology, they helped out.

Q But as far as your enforcement activities, you relied upon, and you dealt directly with Mr. O'Malley, is that right?

A That's right.

Q Now, with regard to your activities in Cook Inlet, when you first went up there, did Mr. O'Malley give [7] you any written instructions as to what you were supposed to be doing?

A Well, no, but I went back to see him there, you know, when he called me back to Washington, and so he told me to go up there and enforce the law, because it hadn't been very well done before.

Q All right. And after you came to Alaska, did he give you any written instructions, or did you talk mainly, or communicate by wire back and forth, or how did you do that?

A Well, by wire, mainly, and then there was a man by the name of Dr. Willis H. Rich, who was from Stanford University, and another doctor there, that I worked with in the spawning of the salmon, and one thing and another, in the creeks and streams all over up there, you see.

Q But your communication with Mr. O'Malley was mainly by wire?

A Yes.

Q Now, did you make any written reports to Mr. O'Malley, that is, formal type reports, concerning your activities there?

A Well, I made a monthly report to the Bureau of Fisheries in Washington, D.C., and made the reports to his attention, you see—

Q I see—

A That made him pretty busy, because he must have had a lot of reports to read.

Q Now, I doubt that you would have any, but did you keep any copies of those yourself?

[8] A No, if I did, they are gone.

Q They are gone?

A I wouldn't say for sure that I did—I might have, you know, but so many years have elapsed, and a fella doesn't keep that stuff around, you know, after it gets so old.

Q But you do recollect sending reports of your activities back to Washington, D.C., is that right?

A Yes, that's right.

Q Monthly reports?

A That's right.

Q Now, Mr. Studdert, we have had marked by the Reporter for identification as Deposition Exhibit No. 1, this map, which is United States Coast and Geodetic Survey 8502, the 16th edition, July 4th, 1970, which has been corrected through Notice of Mariners, 27/70, and, Mr. Studdert, now I am going to hand you what

has been marked as Deposition Exhibit No. 1, and I will ask you if you are familiar with the water area designated on this chart or map as Cook Inlet?

A I would be, yes.

Q You are familiar with it?

A Yes.

Q And with reference to this chart, is it fair to say that the area over which you engaged in your activities was generally northward of a line from Cape Douglas to Cape Elizabeth?

MR. CHARNEY: Objected to on the ground that the question is leading.

[9] A Yes, I would say so—it would take in Cape Douglas too, and Cape Elizabeth.

* * * *

Q Well, do you mean that you would not go below such a line?

A Well, you could say that you could strike that line, you see, and that would be about it, but if there was anything that had to be done below it, why you would go and do it, and that would be your job to do, you see.

Q Now, by the word "below" do you mean north, or do you mean—

A I mean southerly—southerly—north would be, I mean, north would be would be going up Cook Inlet, you see, but I meant below Cook Inlet, where you go down below there a ways, and you would take care of that too, of course.

Q I see. But did you also go into the area north of the [10] line from Cape Douglas to Cape Elizabeth?

A Yes, right up to Anchorage.

Q I see. You patrolled that whole area?

A That's right—

Q Is that correct?

A Yes.

* * * *

Q And what was the primary function of the Bureau of Fisheries, so far as you were concerned?

A Well, in the promotion of salmon, and to see that the salmon were spawned properly, and that there were

no obstructions in the creek, and also the policing of the area.

Q I see. Now, what do you mean by "policing of the area?"

A To see that the law is obeyed, and, you see, there was [11] a closure every weekend, and that was for traps and also for seining, they have to pull up too, and you would have to see that that was observed.

Q And was that your main duty, to see that the law was obeyed?

A During the fishing run—during the run of the fish it was, mainly, yes.

Q During the fish run?

A Yes.

Q And when you are speaking of the law, what law are you talking about?

A The fisheries law.

Q Of what, the United States?

A The Bureau of Fisheries, yes.

Q Of the United States Government?

A Yes.

Q The Bureau of Fisheries of the United States?

A Right.

Q All right, now, Mr. Studdert, I am going to hand you what has been marked for identification as Deposition Exhibit No. 2, and I will ask you if by looking through this, and perusing through it, you can determine what it is?

A I don't believe I brought my glasses with me, but I will do the best I can, that's all a horse can do—now, let me see—

Q Well, let me ask you this, in accordance with your activities for the United States Bureau of Fisheries, were you assigned to any vessel up in the Alaska area there?

[12] A Oh, yes.

Q And what vessel was that?

A The Kittiwake.

Q All right, now, were you—

A It had been a yacht that the Bureau of Fisheries had acquired.

Q And it was named Kittiwake?
A Yes, I think that is some kind of a duck.
Q And are you aware of whether the Kittiwake contained any records of its activities, or maintained any records of any kind?
A Well, there was a logbook kept in the wheelhouse, and that would just about be it as far as any records were concerned, and then that log would be sent in to the Bureau of Fisheries to Washington, D.C., you see, at the expiration of the season.
Q And who kept the logbook?
A Well, myself and the captain.
Q Yourself and the captain of the Kittiwake?
A Yes.
Q And generally what type of activity did you enter into the logbook of the Kittiwake?
A Practically anything that happened.
Q I see. Now, if the records—
A And the ship's condition, and whether she was seaworthy, and so on, and so forth, because there would really blow up some storms, you know, because that is bad country up there.
Q And then did you make any type of reports of the activity of the Kittiwake, based on the log?
[13] A She should have had a daily report somewhere, made by myself and the captain of the Kittiwake.
Q All right, and was there also a monthly report of any kind kept?
A Well, it would be daily, and it would be for 30 days, or 31 days, whatever the month was.
Q But it was a daily report?
A Yes.
Q Now, specifically referring to Deposition Exhibit No. 2, and on Page 4 of that document is a date on the left-hand column there, do you see that?
A Well, I don't—
Q Can you read that at all, Mr. Studdert?
A I can't see that.
Q You can't?
A Not without my glasses.

Q Well, then, let me just read to you what appears on this—
A All right, that's fine—
Q This is under the date of May 27th, 1924. Now, there is an item on that which is marked and noted, "10:35 A.M. Leave Snug Harbor Cannery," and I want to—
A That the Kittiwake?
Q Yes. Now, with reference to what you stated relative to the log kept of the Kittiwake, what would an entry such as I have just read to you, "10:30 A.M. Leave Snug Harbor Cannery," what would that signify or indicate to you?
A Pulled out of Snug Harbor for other points, you know, somewhere else.
[14] Q That you pulled out of Snug Harbor for other points?
A Yes.
Q It would indicate that the Kittiwake had done that, is that right?
A Well, usually it would say something like that it had left Snug Harbor for such and such a place, but apparently that isn't the way it is here—just that they left Snug Harbor.
Q All right, now, with reference to Deposition Exhibit No. 1, you have stated that you are familiar with Cook Inlet, is that right?
A That's right, reasonably well, yes.
Q And is Snug Harbor near the island known as Chisik Island?
A I believe it is, yes.
Q All right, then, where is—
A I think it is, now, but I haven't been to Alaska now and in that area for a good many years, but I think that is so.
Q Now, where, with relationship to Chisik Island would it be? Can you show me that?
A Well, it would have to be off the beach there someplace—is that it there?
Q Well, here is Chisik Island?

A Well, I guess that in there would be it all right, without a doubt.

Q Right in here?

A Yes.

Q And this represents the—

A The shore line—

[15] Q The west shore line of Cook Inlet?

A That's right.

Q Right along here?

A Yes.

Q Now, could you indicate, by placing your finger on this map, where Snug Harbor would be, and then I will try and—

A Well, Snug Harbor would be—well, is that it there? It looks like it—

Q Well, here is Chisik Island right there—

A What about this here—is that Snug Harbor?

Q That's Tuxedni Bay—

A Well, I have a hell of a time without my glasses—I just can't see that very well—I can't tell very well without reading it.

Q But it would be in the vicinity of Chisik Island, is that correct?

A I would think so—that's the way I remember it.

Q All right—

A My eyes aren't good enough to see that map, and my memory really isn't good either to recall that, you see.

Q Now, with reference again to Deposition Exhibit No. 2, there is another item under the indication of May the 27th, which says: "4:35 P.M. Arrive Seldovia Dock," do you see that?

A Yes.

Q What does that mean?

A That would be the little town of Seldovia, which had about 600 to 800 people.

[16] Q All right. And this is on the east side of Cook Inlet, is that correct?

A Well, no, on the west side—no, east side, that's right, on the east side.

Q Right over here?

A Yes.

Q Now, did the Kittiwake make trips between Snug Harbor and Seldovia?

A Well, she was a patrol boat, and she just went anywhere that we thought it might be best to go, you see, so—

Q Now, generally can you recall when the vessel was proceeding from Snug Harbor to Seldovia, what the general route the vessel followed would have been?

A From Snug Harbor to Seldovia?

Q Yes.

A Well, it would have to be easterly—about easterly, or east southeast, something like that.

Q But how would it proceed, that is, what would be the route—

A Do you mean the time elapsed?

Q Yes, and how would it go with respect to the distance traveled, that is, how would you attempt to get to Seldovia from Snug Harbor?

A Well, from Snug Harbor you would go about, oh, southeast, I think, from there, somewhere.

Q And would you change course, or would you move in pretty much a—

A Well, you would alter your course, naturally, for obstructions and reefs, or something like that, you [17] know, and alter the course.

Q And would you then—

A Well, of course, that would be up to the captain, you see, but I would just, you know, having been a captain myself of a vessel, I would stay with him in the wheelhouse, you know, sometimes resting, and the like, but that would actually be the captain's job—Roy Cole was the man that was the captain then.

Q Now, generally, when you can remember when you were proceeding from Snug Harbor to Seldovia, would the alterations of course be of a major extent, or just a minor extent, or how would you designate that, Mr. Studdert?

A You mean chart-wise?

Q Yes.

A Fairly minor, I would say.

Q Fairly minor?
A Yes.
Q In other words, would you proceed fairly directly, do you think?
A That's right, and you would only have to alter the course occasionally, you see.
Q But the alterations, you say, would be what, then, Mr. Studdert?
A Not too great.
Q All right. Now, if you can remember, Mr. Studdert, about what was the rate at which the Kittiwake would travel when it was underway?
A Oh, I would think about 9 or probably 10, if you would push her some.
[18] Q 9 or 10 knots?
A Yes, if you would push her. She would go 10, I believe, if you would "goose her" as the engineer might say, you know, but 9 knots would fit her better, I think.
Q I see—
A 8 to 9 knots.
Q Now, Mr. Studdert, let me just hand you what has been marked for identification as Deposition Exhibit No. 3, and, since you don't have your glasses, I will read it to you—
A OK—
Q This is headed, as follows: "Western Union Telegram. 1924 May 29 AM 6 42. CC102 24 Govt Collect NL Via Seattle. Seldovia Alaska 28. Bureau of Fisheries, Washington DC. Boarded Booth Fisheries Steamer Zapora and New England Fish Company Steamer New England Today Finding both Fishing Halibut in Cook Inlet without Permits. Studdert." And that is spelled on the telegram S-T-U-D-D-E-R-T—
A Yes—
Q And, again, the date on this telegram is May 29th, 1924. Now, that item at the end of the telegram, the S-T-U-D-D-E-R-T, what would that refer to?
A That would be me.
Q That is you, Mr. Studdert?
A Yes.

Q And would that indicate that you had sent that telegram?
A That's right.
[19] Q And when it says on the telegram, "Bureau of Fisheries," what would that mean?
A That's in Washington, D.C. It wouldn't be sent to anyone in particular, or maybe to the Commissioner of Fisheries, Washington, D.C., or maybe just to the bureau, and he would get it anyway.
Q And the Commissioner would get it?
A Yes.
Q Now, what would the indication in the telegram, as follows: "Steamer Zapora and New England Fish Company Steamer New England Today Finding Both Fishing Halibut in Cook Inlet With Permits," what does that indicate?
A Well, at that time everything had to be permitted, I mean, there had to be a permit, you know, to have a fishing operation of any kind, oh, canneries, or ships, or anything, and they didn't have permits, so they were in fault, and subject to being picked up, and all we would have to have then was the Bureau of Fisheries OK to get them.
Q All right. And was it your function, you say, to determine whether or not these ships had permits, or not?
A That's right.
Q And who required that these ships have a permit to fish?
A Well, the master of the vessel would take out the permit.
Q I see. But was this a law that you had to—
A Oh, yes, there had to be a law, that's right.
[20] Q All right. Now, relative to Deposition Exhibit No. 2 once again, where the log indicates as follows: "12:40 P.M. Boarded steamer Zapora, fishing halibut, southwest of anchor point," which is right here—
A Yes—
Q Now, you had left, according to this log, Snug Harbor at 10:35, which was about two hours and five

minutes before the log entry which says, "Boarded steamer Zapora, fishing halibut," is that right?

A Yes.

Q Basing what you can recall relative to the operation of the Kittiwake, and its rate of travel, how far would the Kittiwake have proceeded in those two hours and five minutes?

A Oh, I would think about 16 to 18 miles.

Q 16 to 18 miles?

A I would think so.

Q I see—

A Or knots, well, it would be miles, I guess.

Q And then at 4:35 P.M., the log entry indicates that you had arrived at the Seldovia dock—

A Yes—

Q And where would that be on—

A Well, that was a little town there that was called Seldovia, yes—

Q Now, these 16 or 18 miles from Snug Harbor would be generally, as the Kittiwake operated, in what direction—

A Well, it—

Q From Snug Harbor, of course—

[21] A She would be going in a southerly direction there to Selvodia.

Q Southerly?

A Yes.

Q Now, were these log entries made how often during the day?

A Well, it depended upon the initiative of whoever was in the wheelhouse. If he had the ambition, why he would make a lot of entries, but if he didn't, he would make as few as possible, so there really isn't any required amount, but just something that happens that is unusual is entered in the log.

Q Was it entered in the log, generally, when the event happened?

A Yes, as far as I know, yes, in fact, I always did, and I am sure that Cole always did too.

Q Cole was the captain?

A Yes.

Q I see. Now, Mr. Studdert, during your time in Cook Inlet, when you were patroling there for the Bureau of Fisheries, did you ever observe, so far as you can remember, any foreign fishing vessels in the area of Cook Inlet, which you might describe in any manner in the—

A Well, if we ever did see any, and I probably couldn't answer that exactly because it would be back quite a ways, and if we did, why we would communicate to the Bureau of Fisheries in Washington—

Q I see—

A Either by code, or one way or another, so that then [22] O'Malley got it, the Commissioner of Fisheries, in Washington.

Q You would communicate to Washington?

A Yes.

Q Do you recall actually seeing any foreign vessels there?

A Well, I think that there were some foreign shipping around through there at the time, you know, in the lower Cook Inlet.

Q What about foreign fishing vessels?

A Well, there could have been, and I wouldn't say that there weren't, because fish were at quite a price at that time, and, you know, there was—the fish were desirable to get, and so they poached a lot up in that area—

Q All right, and—

A And we were to have the job of picking them up and getting them out of there, you see.

Q In other words, if you would have seen one, you would have gotten her out of there?

A That's right.

Q And why would you have gotten the vessel out of there, Mr. Studdert?

A Well, if it was a foreign ship, why you would not only get her out, but you would seize the ship, you know, if you could.

Q And why would that have been?

A How's that?

Q And why would you have seized the vessel?

A Well, to get the ship and turn it over to the Govern-
[23] ment.
Q I see—
A To the Coast and Geodetic people.
Q And turn the ship over to the Government?
A That's right.
Q And this would have been anywhere in that area designated as Cook Inlet, on Deposition Exhibit No. 1, Mr. Studdert?
A Well, it could be—you know, it could be that there were some, but I can't really recall right now, or remember—my memory isn't quite that good, but there could have been some monkey business going on there too, you know, with these foreign vessels going in there to fish, and if you catch them, why all right, and if you don't, it was all right too, I guess, I mean, they might be in there, and you are not, and if you happen to get them, well—there was some kind of a penalty on that, I believe, and usually the Bureau of Fisheries Commissioner takes that over then—takes it out of your hands, and they would maybe file suit against them, or do whatever was necessary with the matter.
Q And back in 1924, when you were on Cook Inlet, did you think that the foreign vessels had any business in Cook Inlet?
A Well, we would run them out, you know, unless they would happen to have a "Man-of-War" or something in there, but we would get them the hell out of there if we could—
Q I see. So then—
[24] A I don't know whether we were right or wrong, but, after all, this was in the United States of America, and I don't know that they would have any business in there—I know that they would have kicked us out damn fast if that was in Russia.
Q What was the United States of America—do you mean Cook Inlet?
A Yes, Cook Inlet.
Q But, specifically, however, you can't remember having seen a foreign vessel there, is that right, Mr. Studdert?

A Well, I can't say that I did, but I wouldn't say that I didn't, and I wouldn't say that we didn't haul them out of there, but I just don't remember that well, you see, any more.
Q It is difficult for you to remember?
A My memory is bad.
Q It has been a long time ago?
A Yes.
MR. CRANSTON: I wonder if we might go off the record for a few moments.
MR. CRANSTON: Now, on the record again, please. Mr. Studdert, just a couple more questions—
A Fine—
[25] Q When an event took place, and I am referring to Deposition Exhibit No. 3, which has as its heading, "Western Union Telegram," and which was addressed to the Bureau of Fisheries, and signed by Studdert, would you, if you were to send a telegram to O'Malley, would you do it immediately after an event took place, Mr. Studdert?
A Well, it would be as soon as we got to a wireless station, you see.
Q As soon as you got to a wireless station?
A Yes. Very few of those little boats had a wireless aboard, but if they had, of course, then they could contact a shore station and we could get it right off, you see.
Q You would do that as soon as possible?
A Yes.
Q Now, between Snug Harbor and Seldovia, where were the wireless stations, if any?
A Seldovia.
Q Seldovia?
A Yes.
Q That was the only wireless station?
A I think that they had a wireless station at Snug Harbor for a little while, but it was just a cannery that was there, and usually it was closed down, you know, because it would run for only, oh, maybe three months out of the year, you know, and then it was closed down.

Q Now, can you recall generally, and this may be testing your memory a little bit, but, if you can recall, [26] what your general running time was between Snug Harbor and Seldovia—how long it took the Kittiwake to make that run?

A Oh, three and a half hours, maybe.

Q Is that right?

A I would think so, just roughly guessing.

Q Three and a half hours?

A Something like that.

Q Now, on the log, when you kept the logs, so far as you can recall, were they kept accurately?

A Oh, yes, they were no good unless they were.

MR. CRANSTON: I have no other questions.

CROSS EXAMINATION

BY MR. CHARNEY:

Q Now, Mr. Studdert, I am going to ask you some questions—

A Fine—

Q To try and clarify some of these things that you have been discussing—

A Fine—

Q And some of the things that you have been discussing with Mr. Cranston, and I may ask you some other questions—

A All right—

Q Now, Mr. Studdert, I have here in my hand Deposition [27] Exhibit No. 2, and Mr. Cranston was reading from the entry on that document of May 27th, 1924, as you will recall—

A Yes—

Q Now, the first entry on that document is 12:00 A.M., and it says, "Off East Forland, enroute Polly Creek," for May 27th—

A Yes.

Q Does that mean that they were going directly to Polly Creek?

A Well, that—

Q That is, that is the destination?

A Well, that would be the general destination, but as I think of it now, it wouldn't mean that we wouldn't turn, you know, and go up some inlet, or something else like that, if we thought of something that needed to be checked.

Q Why would you turn?

A Well, for the reason of something else, you see, that we had—

Q But if the entry said you were enroute to somewhere, then you would have a destination?

A Well, you might be enroute to this particular point, but you might turn, you see, off the point and go up the inlet, for instance, something like that.

Q But where there were set ports of call, wouldn't you have had to go from one to another?

A No sir. You see, we were patroling fishtraps, and such as that, and a lot of poaching was done during that time, and that was mainly our business, you see, [28] picking up people who were involved and unlawfully engaged in some illegal fishing or poaching, or something, you see.

Q So it is fair to say that you wandered around this area?

A Which?

Q You wandered around?

A Well, not exactly wandered, because we went to direct points, you see, to apprehend these people, if you could, or if it were necessary.

Q Now, rather than—

A You see, a boat of that kind is charged mainly with the, oh, with the keeping of the law, you see, insofar as fishing is concerned.

Q Now, if rather than saying, "Off East Forland, enroute Polly Creek," you said in the log, "Leave for Polly Creek," without saying "enroute" or anything else, what would you do then?

A I don't understand the question—

Q Well, if you—

A You see, "enroute" means that you are going someplace, as I understand it.

Q Yes, but I am saying, rather than to say that you are enroute to someplace, you would just say just leave one place, now, what would that mean?

A Well, that would just mean that you left that point, you see, and then going to another point, and maybe you didn't disclose the other point that you would be headed for.

Q Like you could maybe change your mind in the middle [29] of the run?

A Could be—could be, yes, pretty easily.

Q And you would—

A And weather would change the route sometimes, if it were bad.

Q Now, if you left, oh, say the Snug Harbor cannery, might you go over to Anchor Point before you would go to the—

A You might, because there was a big fishtrap there at Anchor Point, which was a tremendous affair, and that belonged to the—oh, what the hell, I can't think of the name of that outfit now—oh, Port Graham, and they had traps, you see, all along the shoreline there, and we had to patrol all those traps, you know, to see that they were not fishing illegally.

Q And this would be something of interest to you, is that right?

A Well, yes, if they were fishing illegally, why you would haul them in, you see.

Q Now, were those traps very near the shoreline, Mr. Studdert

A Oh, they would be a thousand feet out.

Q A thousand feet?

A About that.

Q Did you consider that near Anchor Point?

A That could be near Anchor Point, yes.

Q If you saw a ship near Anchor Point, I suppose it would be in that general vicinity of a thousand feet off shore?

A Yes, something like that, however, it is quite flat [30] when it is off the point there, you know, so they have to keep pretty well off there, if it is a ship of any depth.

* * * *

[33] Q Do you know why you didn't have jurisdiction more than three miles from shore at Cook Inlet?

A Why?

Q Yes.

A Well—

MR. CRANSTON: I don't know that Mr. Studdert has testified to this point, and this may be improper—

A Well, I don't know that that's correct—I think I answered you that I didn't know that is correct, but it may be more than that—I don't know that the [34] wardens had—

MR. CRANSTON: I am going to object to the question, for the record, on the ground that I am not certain that the witness has testified to that point—

A You see, the three-mile limit is for the coastline in general, but Cook Inlet could come under a different meaning and interpretation.

MR. CHARNEY: Were you ever instructed that it did come under a different interpretation?

A No, never.

Q You never were?

A No.

Q And the normal rule was that it was measured from the shore?

A That's right. Three miles.

* * * *

[35] MR. CRANSTON: I will agree to that. For the record, then, if the Reporter will mark as Deposition Exhibit No. 3 the Western Union Telegram of May 29th, 1924, and a reply to that from O'Malley to Studdert, dated May 28th, 1924, and two other telegrams, one from O'Malley to Smithers, dated May 28th, 1924, and one Smithers to O'Malley, dated May 28th, 1924, so that this entire document may be Deposition Exhibit No. 3 then.

[36] MR. STUDDERT: That was in regard to the Japs off-shore, was it, at the time?

MR. CRANSTON: No, that was the same incident with the Zapora and the New England.

MR. STUDDERT: Well, any American, I think it is his duty to be wary of the Japs or any foreign power that is cruising too close to the shore there.

* * * *

[3] C. D. SWANSON,

a witness in the above-entitled cause, was called for examination by counsel for plaintiff, and after having been duly sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

* * * *

[8] Q Do you recall any matter involving foreign vessels fishing in Cook Inlet in the early 1950's?

A Yes, I do. I recall that a report came to the regional office in Juneau that Canadian fishing, Canadian halibut vessels were fishing in Cook Inlet.

Q Do you recall who made that report?

A Not specifically.

Q Who would have made the report or what kind of individual made the report?

A It would have been received from an enforcement officer in our division upon patrol on Cook Inlet.

Q What was the substance of the report?

A That Canadian fishing vessels were observed in Cook Inlet.

Q How did you respond to that report?

A We ascertained whether or not the vessels were within [9] three miles of the shore. The report which came back was negative. They were more than three miles offshore.

Q Who would have received that report?

A It would have been received by Mr. Ralston or Mr. Rhode or Mr. Baltzo presumably. It is possible that I received it myself over the radio. I don't distinctly remember it.

Q Was there a specific procedure for the person to receive these calls? Was he clearly defined—

A All communications to the regional office were by instructions directed through to the regional director. This, of course, could be the regional director or his assistant if he were not present. It could also, in specific areas of jurisdiction as in this case, refer to the appropriate division supervisor.

Q Was there a decision made with regard to this report?

A I recall there was.

Q And what was that decision?

A After discussion of this matter we concluded at the regional director level that these vessels were outside the jurisdiction of the laws that we enforced and the field was so notified.

Q Did you consult with anyone else on that decision?

A I'm certain this was a determination as a result of [10] consultation with whoever was present representing the regional director and the Division of Law Enforcement.

Q When you say the field was so notified, what significance is attached to that?

A Well, the question came in as to our authority to apprehend these vessels and our conclusion was that we had no such authority and this determination was relayed back to the field agents so they would have that information and not proceed to apprehend or attempt to apprehend those vessels.

Q You indicated that when a call came in it was addressed to the director generally?

A Regional director.

Q Regional director, and that it was customary whoever was there and could handle the problem would take the call, is that correct?

A Yes, whoever was there representing the regional director in his absence, whoever was representing him in his absence as acting director.

Q This included what individuals?

A Mr. Baltzo or Mr. Ralston, or in the absence of both—I should say all these three, possibly other division supervisors.

Q Would you be one of those individuals?

[11] A I could have been.

Q Is it possible that Mr. Ralston was not involved in this?

A It is possible that he was not there.

Q Do you know whether this was a unique decision or was it consistent with the policy that had been followed?

A There had been previous incidents which resulted in discussion of our authority outside the 3-mile limit which had been determined to be outside of our jurisdiction, and in that sense it was consistent.

Q As a result of this incident and these other occasions when you discussed jurisdiction, does this mean that the field agents were generally instructed that they had no jurisdiction over foreign vessels inside Cook Inlet more than three miles from shore?

A Yes.

Q Were there any written instructions or written guidelines to your field agents?

A I can't recall.

Q After this incident were there any understandings with respect to enforcement against foreign vessels in Cook Inlet beyond three miles?

A Well, the understanding from this decision would be [12] that in any subsequent instance of vessels in similar situations, they would not be apprehended.

Q Would this decision with respect to jurisdiction over foreign vessels extend to other types of fisheries and—

A Yes.

Q Do you recall if fishing by vessels beyond three miles from shore of Cook Inlet was reported either before or after this incident?

A I recall no other instances.

Q You referred to the Anchorage District which includes Cook Inlet. Would the Anchorage District include Cook Inlet?

A Yes.

* * * *

[15] EXAMINATION BY
COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

* * * *

[24] Q Now, where did you operate while in the Coast Guard?

A On patrol in Southeastern Alaska, off the coast of Southeastern Alaska, and later on-shore assignments at Kodiak and Seward.

Q I see. You never operated any type of seagoing patrol in the Cook Inlet area?

A No, sir.

Q What was your responsibility while at Seward and in Kodiak?

A At Kodiak I conducted duties under the designation of captain of the port which I related to security of the port, the commercial port, and the entrance and departure and control of vessels in and around that port. At Seward I had similar responsibilities for a broad area including Cook Inlet and Prince William Sound and some of the interior of Alaska related to the security and protection of the ports and port facilities and the control of commerce in and out of these ports.

Q Now, you say the Cook Inlet area did include an area [25] of your responsibility?

A Yes. Port facilities.

Q I see. Would that have included all the way up to Anchorage?

A Yes.

Q Or was there a separate captain of the port in Anchorage?

A It included Anchorage.

Q And you were to ensure that, what, basically, no foreign, no enemy vessel—

MR. RASHKOW: I will have to object. It is a leading question.

MR. CRANSTON: Well, he's on cross-examination. I think I can lead an adverse witness on cross.

MR. CHARNEY: I think you have gotten into a field that was not subject to direct examination.

MR. CRANSTON: He brought this all out on direct, what he had been doing, so I think as long as he mentioned it I can explore it. Apparently, it is part of his background. I'm going to keep asking you these questions.

BY MR. CRANSTON:

Q Did you consider it your responsibility to keep the entire area secure from any enemy intrusions?

[26] A Responsibility was limited to the protection of the port and port facilities against sabotage and arson.

Q Did you concern yourself at all with the vessel traffic in Cook Inlet?

A No.

Q You weren't concerned with that aspect at all?

A No.

Q You didn't consider that as anything necessary for the immediate protection of the ports along Cook Inlet?

A That was not my assigned responsibility.

Q Well, let's pose a hypothetical. Suppose that a foreign vessel of any type while you were assigned to this job had appeared in the waters of Cook Inlet, what would you have done?

MR. RASHKOW: I will have to object on the ground that the facts are not before the witness.

BY MR. CRANSTON:

Q What would you have done?

A Shall I answer this?

MR. RASHKOW: Yes.

THE WITNESS: Would you restate the question.

BY MR. CRANSTON:

Q If while you were fulfilling your job which you have [27] described to me at Seward you had become advised of the presence of a foreign vessel entering the waters of Cook Inlet, say, anywhere north of Cape Douglas or Point Gore, what would you have done?

A Notified the Navy at Kodiak who had the responsibility for that.

* * * *

[31] Q To your knowledge was there any letter or memoranda made which indicated or talked about or is concerned with this incident of sighting a Canadian halibut vessel at Cook Inlet?

A You're speaking of transmitting this to the regional office or referring it back?

Q Anything whatsoever. Was there any reference made to this in any written memoranda, letter, document of any type, whether transmitting it to a higher office or what?

A I'm sure there were documents prepared discussing this subject. It is hardly a question that would have been resolved without some communication to higher authorities.

Q Now, you think these would have been in writing?

[32] A Either in telegrams or in writing, yes. Telegram was the common method of communicating in those days.

Q Where would the telegram have been sent?

A These are matters outside of my knowledge, actually because I don't know if one was sent.

Q But you do know that? In other words, it is not outside your knowledge the fact that this report was received concerning a Canadian halibut vessel?

A Yes, I have knowledge that it was received?

Q Apparently you have some knowledge as to the disposition that was made?

A Yes.

Q And as I understand your testimony, you are saying that a decision was made in the Juneau office concerning this, is that correct?

A That is my recollection.

Q Well, you have categorized your testimony with respect to that thing about which you have knowledge and that thing about which you don't have knowledge. Now, do you have definite knowledge that such decision was made in the Juneau office concerning this matter or is this something you are speculating about?

A I can only say that I learned of it in the Juneau [33] office.

Q All right, from whom did you learn this?

A It would be from the regional director or whoever was acting for him.

Q Now, am I to understand, first of all, just so I get this whole thing straight, that whatever communication was made concerning this Canadian vessel was not made to you?

A I don't recall receiving it directly.

Q Well, do you think you received it directly or do you think you did not receive it directly? I'm going to go into this in some detail because this is very important and I'm going to get at the basis of this, apparently through your testimony, so I have to find out exactly what took place. I can't accept a hypothetical and suppositions.

A Well, as I explained earlier, messages were directed to the regional director from the field. This was customary practice. In some instances where it was known that a particular staff member of the regional directorate would be the individual to handle this matter it could possibly have been called directly to that person's attention.

Q Was it called to your attention?

A I can't recall if it was called to my attention directly or by one of the regional directors above me. Now, [34] this could have come by radio or it could have come by wire and it could have come by telephone call.

Q Now, in other words, you're saying that you don't remember how it was called to your attention. You cannot say the call was made directly to you—

A No.

Q —is that correct? I want to be fair about what I am supposing here because—

A I can't say it was made directly to me.

Q You can't say it was made directly to you. All right. So then if it was not made directly to you it would have been made directly to whom?

A Whoever in the regional directorate was responsible or present at that time.

Q And that would have been who?

A It could have been Clarence Rhode, it could have been Howard Baltzo and it could have been Dan Ralston or it could have been myself.

Q But I have the feeling, and correct me on this if I'm wrong, that it was not to you directly?

MR. CHARNEY: I object to this. He has given his answer.

MR. CRANSTON: Well, but he equivocates. He says one thing and then later on he says it could have been to him.

[35] THE WITNESS: I can't recall if it was or not. There were many messages that arrived at the Juneau office that were received by staff personnel monitoring the radio system.

BY MR. CRANSTON:

Q All right, let's pass for a moment the exact person who may have received this message and go on to its disposition. After it was received, then apparently some action was taken regarding it. Is that a fair statement of what you have testified to?

A Right.

Q And, again, I believe a fair statement of what you have testified to is that whatever action was taken was not by you, is that correct?

A Officially not by me. I may have physically transmitted the message.

Q All right, you acted as a conduit for the message, you think, but you are not even sure of that, are you?

A I was knowledgeable of the decision and the fact that it was relayed back to the field. I participated in the discussions that resulted in the decision.

Q All right. You participated in the discussions that resulted in the decision but you did not make the decision yourself, is that correct?

[36] A That's correct.

Q All right, with whom did you participate in these discussions?

A Whoever of the regional directorate was present and acting for the regional director.

Q Well, is this a shorthand way of saying Howard Baltzo?

A It could have been Clarence Rhode or it could have been Howard Baltzo or it could have been Dan Ralston or it could have been all or part of this group.

Q In other words—

A I can't recall specifically the individuals. I did not do this unilaterally.

Q You can remember in some detail the substance of the message, the disposition of the message but you cannot recall any of the individuals who were actually concerned in the disposition of this problem, is that correct?

A I'm certain Howard Baltzo was present but Clarence Rhode may also have been present. He was the regional director and his participation would have been pertinent.

Q Over how long a period of time did the discussion take place?

A I can't recall. It wasn't a great deal of time.

Q More than a day, less than a day?

[37] A It could have been more than a day.

Q And it is your testimony then that as a result of these discussions in the Juneau office that a decision was made not to interfere with foreign vessels more than three miles off shore in Cook Inlet, is that what you have testified to?

A Yes, sir.

Q Did the Juneau office confer prior to this decision with any other office?

A I did not confer. I cannot testify as to what others did.

Q Well, do you think that this decision was made by Howard Baltzo or by someone else higher above Howard Baltzo?

A I don't know.

Q Do you think any telegrams were sent to Washington concerning this?

A I would assume there was communication, but I don't know this. I can't testify to it as a fact.

Q Isn't it a fact, Mr. Swanson, that you really are of the opinion and you have made the statement to per-

sonnel of the State of Alaska that Howard Baltzo could not have made this decision, that it would have had to have been made by someone in higher authority if a decision were made, namely, Mr. Day or perhaps Donald Chainy who is the chief counsel for the [38] Bureau?

A No, I didn't tell Mr. Cheek that.

Q You didn't tell him that?

A No.

MR. CHARNEY: At this point I would like to make a statement on the record to put the State of Alaska on notice that throughout these series of depositions that have been going on for weeks, the tactic of Alaska has been to have unreliable information to be used to try to impeach the testimony of the witness and I find that this is an abhorrent practice, and I think Alaska should not take this tactic. You should be on warning we might request the witnesses not to answer or cease cooperation if this tactic continues.

BY MR. CRANSTON:

Q Mr. Swanson, getting back at exactly the effect of this decision, is it fair then to assume that you do not know whether or not the Washington office of your Bureau participated in the decision?

A I do not know whether they did or not.

Q And is it again fair to say that it is possible that they did?

A Very definitely.

Q Then, let's take it one step further since we seem [39] to be unclear as to any of the personnel directly involved. If the decision were relayed to the Washington office who would have it been relayed to?

A Again, the practice would be to address it to the director.

Q And that was—

A —of the Fish and Wildlife Service, and that was Mr. Al Day.

Q And he is still living, I understand.

A I think so.

Q All right. Is there anyone else that it could have been relayed to?

A It could have been relayed to the chief of the Branch of Management and Enforcement.

Q Who would that have been?

A I believe that was Mr. Jesse Thompson.

Q Is he still living?

A No, he's not.

Q Anyone else?

A I don't know. It could be, as we did in Juneau in the regional office, it would very, very likely be addressed to the director and be handled by members of his staff appropriate to the subject matter of the message which could include Mr. [40] Chainy.

Q Now, do you recall exactly where in Cook Inlet this vessel was observed or said to have been observed?

A No, sir. It was reported to be deep into Cook Inlet.

Q But beyond that you have no idea whether it was in Katchemak Bay, Anchor Point, up from Kalgen Island. Can you give any information?

A The information that we received was that it was more than three miles offshore but deep in Cook Inlet.

Q And beyond that you cannot pinpoint?

A No, sir.

Q Who was the chief enforcement officer in the area at this time?

A Mr. Larsen, Holger Larsen.

Q And who else was working with him?

A I can't recall exactly. There were other officers or enforcement agents also assigned to the district. I can't recall offhand who they were.

Q All right, now, you have testified that the conclusion which was reached was transmitted to the personnel in the field, is that a fair statement of your testimony?

A Yes, meaning in the Cook Inlet area.

Q And I assume then that the personnel to whom it was [41] transmitted would have been Holger Larsen, he being the chief enforcement officer in the field?

A I'm sure he got this message but it could have been directed to the officer who presented the question, more specifically, at a different location, perhaps.

Q All right, now, when you say the response and the decision which had been made was transmitted to personnel in the field, do you mean that there is a general guideline or policy established which you expected all personnel to comply with when this question arose again?

A Well, I'm satisfied that the response would have related to the legality of the incident as opposed to the specific—or the legality of the circumstances as opposed to the specific instance, and in which case it would be equally applicable to similar incidents.

Q Now, since you testified that it would have been equally applicable to similar incidents, was any general policy along this line made known to those persons in the field whose responsibility it would be to enforce the laws and regulations?

A I can't recall a specific instruction; that is, to all officers, all agents.

Q So, when you testified that field agents generally were instructed that they had no jurisdiction over Cook Inlet [42] more than three miles from shore with respect to foreign vessels, what type of general instruction are you referring to or did you refer to in your direct examination?

A I don't recall that I specifically related that comment to Cook Inlet. It was generally indicated to all officers that he did not have jurisdiction outside the 3-mile limit as to foreign vessels.

Q "It was generally indicated." Now, how was it indicated?

A This could have been in written instruction, it could have been in verbal instructions at our annual conferences. I can't recall.

Q Who would have made a written instruction if such a written instruction were in fact made?

A The regional director would logically have published such an instruction or the regional supervisor of the Division of Law Enforcement.

Q And that would have been Mr. Ralston, is that correct?

A Yes, or myself in an acting capacity.

Q Can you remember specifically whether or not any such written instructions were made?

A No.

Q Can you remember specifically any annual conference [43] where such a general instruction was given?

A No.

Q Aren't you really assuming an awful lot then when you say that the field agents were generally instructed they had no jurisdiction when, in fact, you are unable to disclose how or when such a general instruction was given?

A The limitations of the Fish and Wildlife laws are quite well defined, and most officers were familiar with the limitations of these laws.

Q All right, but you are assuming all this, aren't you?

A I'm certain it was discussed in some of our meetings or communications, but I can't tell you specifically when or where. This is a subject that would logically have been discussed. I can't say that it was.

Q You can't say that it was discussed?

A No, I can't recall when it was.

Q Well, you also just testified you can't say that it was. Was that really an accurate statement of what—

A No.

Q That statement was not accurate?

A I can't recall. I'll correct that statement.

Q All right. You can't recall that it was, but yet your testimony is that you're certain that it was?

[44] I recall that—excuse me, strike that. Restate your question, please, as to what you—

MR. CRANSTON: Read back the question, please.

(The question read.)

THE WITNESS: Would you please restate what you're referring to as "it?"

BY MR. CRANSTON:

Q The instruction relative to the authority with respect to foreign vessels more than three miles offshore in Cook Inlet?

A I recall that instructions were passed back to the officers who inquired that in this instance that we did not have jurisdiction over this Act over three miles offshore.

Q All right, but that is quite different, is it not, from saying that field agents were generally instructed? In other words, now you are testifying that this one particular agent who made the report was instructed with reference to this report but you are not testifying that a general instruction was given to field agents?

A I can't recall the form or the time or the place when this matter was discussed with all agents together. We only had one meeting a year when all agents were assembled together. I can't state or I can't recall the time or place or if such an [45] instruction was specifically given.

Q You cannot recall if such an instruction was specifically given?

A That's right.

Q Is it also fair to say that you are not certain if such an instruction was specifically given?

A Such an instruction was given to the officers who posed the question.

Q But beyond that your testimony is that you will not say with certainty that additional instructions were given?

A That's correct.

Q Thank you. You testified that you participated while you were in the Cook Inlet District in designing and preparing guidelines to carry out your program. Is that basically a fair statement of your testimony?

A I related this to my duties when I was in Juneau.

Q Well, now, is this while you were involved as an assistant to Mr. Ralston?

A Yes, yes.

Q You then were familiar, I take it, with the policy of the Division of Enforcement with respect to commercial fisheries in Cook Inlet?

A Yes.

[46] Q Was it the policy of the Division of Enforcement with respect to commercial fisheries in Cook Inlet to discriminate in favor of foreign fisheries against

American fisheries, or those engaged in foreign fisheries to discriminate in their favor as against those engaged in American fisheries?

A Not to my knowledge.

Q It was not the policy?

A That's right. Not to my knowledge.

Q All right. Now, let's carry that out. You have testified, I believe, that you or somebody whom you are not completely certain, had reached a decision that foreign fishing vessels more than three miles offshore in Cook Inlet were not to be interfered with, is that correct?

A That's correct.

Q All right. Now, explain to me generally what the laws and the regulations with respect to salmon fisheries required for, let's take as an example, drift netters?

A The same rules would apply insofar as policy was concerned.

Q All right, but let's just ask specifically what laws and regulations you enforced as applicable to them?

A Starting and quitting times, in the areas in which they fished and areas primarily they could not fish.

[47] Q Any other?

A Length of nets, yes.

Q What did that apply to?

A I can't recall what specifically.

Q Were you concerned, for instance, with the length of gear that the fisherman could use?

A Yes.

Q And the spacing of the gear?

A Yes.

Q Are you familiar at all with the basis for imposing such gear limitations on a fishery?

A Yes.

Q What was that basis?

A It was to accomplish an escapement of the anadromous fish through the fishing gear and into the spawning grounds. That was the purpose of it.

Q And, in effect, then the application of the regulations to those engaged in the fishery was to restrict somewhat the amount of fish which they could take?

A No.

Q Well—

A Please, restate that.

Q These regulations were intended to impose some limit [48] upon the amount of fish which could be taken from the fishery, is that correct?

A No.

Q Well, I assume if there were no escapement then essentially all the fish could be taken, is that not correct?

A Please, restate that.

Q If there were no escapement as a result of the types of gear and spacing of gear and other regulations, then a substantial number, if not almost all of the fish, would be taken?

A Would be taken?

Q Yes. Or could be taken?

A This is a logical conclusion. Do you understand the terms you are using?

Q Yes.

A All right. Did I answer your question?

Q Yes, you answered my question. Now, other witnesses have testified that such things as spacing limitation, length of net regulation, primarily with respect to drift net fishermen, were imposed with respect to American fishermen outside or beyond three miles in Cook Inlet?

MR. CHARNEY: I object to that. It is not in the record.

MR. CRANSTON: Well, let's get it in the record.

[49] BY MR. CRANSTON:

Q Did you not, in fact, seek to ensure compliance with your regulations by all American fishermen throughout the entire Cook Inlet District?

A Not to my knowledge.

Q Not to your knowledge?

A The White Act provided that no fish taken outside the territorial waters could be landed in the Territory, if they were taken during a closed period within the Territory.

Q Are you testifying now that the regulations of the —that were promulgated under the White Act were not imposed against American fishermen more than three miles offshore in Cook Inlet?

A I was not present. I cannot testify.

Q All right, you were not present but do you have knowledge or are you informed that they were not so enforced against American fishermen more—

A No, I do not have knowledge.

Q You don't have any knowledge one way or another on this point?

A No, I don't. I was not present and observed the salmon fishery.

Q Did you hear anything about, about any attempts to [50] impose regulations against American fishermen more than three miles offshore?

A I can't recall that.

Q You can't recall any conversation, any incident, an attempt by Holger Larsen directly under you of anything of this sort more than three miles offshore of Cook Inlet?

A I can't specifically recall it.

Q Well, since in the past we haven't been afraid to talk about generalities, can you generally recall it?

A No.

Q You had no feelings one way or another about this in your job as second in command of enforcement in the Cook Inlet District?

A I can't recall that it was a subject of discussion or question within my presence.

Q Within your presence. Would you explain what you mean by that statement?

A I mean by that that I do not recall receiving a question or discussing that subject with Holger Larsen or anyone else.

Q Is it your testimony then, as I understand it, that you had no authority to arrest or enforce the fishery regulations in the White Act against Americans more than three miles [51] offshore in Cook Inlet? Is it your testimony that you had no authority to do this?

A You mean what I think now or then? I can't recall for certain.

Q Then. I want to know what was done then and what your policy was then.

A Within my recollection it was my understanding that we had no jurisdiction outside the 3-mile limit.

Q Where was the drift net fishery conducted, within the 3-mile limit?

A I'm sure it was.

Q It is your testimony that the principal drift net fishery conducted in the Cook Inlet District while you were involved in enforcement there was conducted within an area three miles from shore?

A I didn't personally observe it. I can't answer that.

Q Are you at all familiar with the laws with which you were expected to enforce?

A Yes.

Q All right. Were you at all aware while you were involved in the Cook Inlet area as to where the drift net fisheries were carried on?

A Yes.

[52] Q And it is your testimony today that that awareness is that the drift net fishery was carried on within three miles from shore or most of that fishery?

A Yes.

Q Thank you. Let me just ask one further question. Who made you aware of this point respecting the area in which the drift net fishery operated?

A I can't recall any specific individual. We received periodic reports of activities of fishermen and their activities and I don't recall any report to the contrary. In this sense—

Q Well, do you recall a report telling you that the drift net fisheries in Cook Inlet were conducted substantially within three miles from the shore?

A No, but I—I don't recall such a report.

Q But this is your belief at the present time that is where those fisheries were conducted?

A Yes. That's what the regulations provided for and we had enforcement people on the grounds.

Q Well, wait, now you're telling me that a regulation provided that the drift net fisheries should be conducted within three miles from the shore?

A I'm referring again to area of jurisdiction.

[53] Q Was there a specific regulation that you can refer me to which provided that with regard to the drift

net fisheries, your area of jurisdiction was limited to points within the 3-mile limit?

A I can't recall the specific circumstances.

Q But without belaboring the point you just made the statement that is what the regulation referred to.

A I withdraw that word "regulation."

Q What did you refer to?

A The determination that our jurisdiction extended to three miles.

Q That is what a regulation referred to?

A No, I said that is what brings me to that conclusion, that it was conducted inside the 3-mile limit.

Q You have concluded that the drift net fishery was substantially carried on within the 3-mile limit because you have reached a conclusion that your jurisdiction did not extend beyond three miles, is that what you are testifying now?

A Again, I can only say I was not present. I did not observe it. I can't tell you where the fish—

Q I just want to understand your testimony at the present time. You have reached a conclusion that the drift net fishery was substantially conducted within three miles from [54] the shore, and I am just wanting to ascertain how you have reached this conclusion and I believe you testified that you reached it because you had also formed the conclusion that your jurisdiction did not extend beyond the 3-mile limit?

A Those conclusions would be consistent.

Q Well, I don't want to be unfair, but is this your testimony. Is this what you have testified to? I could have her read back the whole record.

A I can only tell you that I was not there; that I have no recollection of receiving any statements or complaints of any violations to that extent.

Q You received no complaints of which you are aware that there were drift net regulations being violated, is this what you're saying?

A We had many violations but not that one.

Q No violations with respect to any regulation involving drift nets?

A I don't recall—yes, we had violations involving drift nets.

Q But I suppose you're testifying that the reports of those violations involved incidents within a 3-mile limit?

A To the best of my recollection, they did.

Q All right. And getting back to the original subject [55] which we are discussing, this is the basis upon which you concluded that the drift net fishery was generally conducted within a 3-mile limit, is that correct?

A It would seem to me to be a logical conclusion although I would not care to make that testimony at this time.

Q Well, what would you like—I mean I want to get to the basis, first of all, your policy towards drift netters, where you were aware that drift netters fished and what you would do if these regulations were violated?

A I think the regulations were quite specific in themselves. I don't recall what their terms were. I think the records could be found. We have many violations under the drift net regulations and many were apprehended. I don't recall any that related to area of jurisdiction although there may have been some.

Q It is still your testimony that you had no jurisdiction to enforce these White Act regulations against drift netters more than three miles offshore, is that your testimony?

A Yes.

Q Let me ask you this, suppose that a substantial or a significant amount of the drift net fishery was conducted three miles offshore, would you still consider it beyond your authority to enforce the regulations against that fishery?

[56] A I would hesitate to make a response to that question involving a supposition. Why don't you state it more specifically?

Q Well, I think under the circumstances that is the best I can do.

A I stated it was my belief and understanding that our jurisdiction did not extend beyond the 3-mile limit under the White Act fishery.

Q You are hesitant, however, to venture a statement as to what you would do or you would have done back when you had this responsibility, if you were aware that a significant drift net fishery were carried on more than three miles from shore. Is that a fair statement of your position? You are hesitant to venture an opinion on this?

A Yes.

Q And that hesitancy is because in that context you would be uncertain of your jurisdiction or what?

A No, I think that most every incident has its own peculiar circumstances, and those may determine what would be done.

Q Well, you're saying then that perhaps had perticular circumstances arisen involving a drift net fishery more than three miles offshore you are not certain of your previous con- [57] clusion respecting your jurisdiction?

A What was my previous conclusion?

Q That you had no authority beyond the 3-mile limit.

A It was my understanding and belief that we had no authority beyond the 3-mile limit.

Q But, I'm asking you now as you testified that it would depend on the circumstances of each particular case that had a drift net fishery violation been brought to your attention more than three miles offshore, would you decide on the basis of some other, perhaps, considerations whether or not to take any action?

MR. RASHKOW: I object. This is irrelevant. The question is what was done and what was the policy.

THE WITNESS: I prefer not to answer a hypothetical question.

BY MR. CRANSTON:

Q Well, okay. Are you refusing to answer that question?

A Answer it?

MR. RASHKOW: Well, you can answer it.

MR. CRANSTON: I will ask for a court order on the question.

THE WITNESS: Repeat the question.

MR. CRANSTON: Read the question back, please.

[58] (the question read.)

THE WITNESS: We might.

BY MR. CRANSTON:

Q You might have taken some other action?

A No, we might have decided on the basis of some other circumstances.

Q I see. What would those circumstances be?

A It could have been stress of weather, breakdown, conditions which were beyond the control of the operator.

Q All right, in other words, these were circumstances under which you decide not to enforce the regulations, is that right?

A Not necessarily not to but how they were handled, what charges, perhaps.

Q But you would still be concerned, I take it, with respect to such a violation?

A Yes, I think so.

Q And are you testifying that under no circumstances would you hesitate to enforce the regulation with respect to such a violation?

A You have me confused as to what your question is.

Q Are you testifying that under no condition you would not enforce the regulation in the event of a violation of this [59] type? I'm talking about one outside the 3-mile limit.

A Your double negatives have me a little off as to what the proper answer is.

Q You testified earlier that all of your actions with respect to a violation of a regulation outside the 3-mile limit would be governed by whatever circumstances were then apparent to you. I'm not trying to put words in your mouth but I'm trying to get at what you're testifying to.

MR. RASHKOW: I object. He didn't specifically state that. It doesn't conclude what he concluded.

BY MR. CRANSTON:

Q What was your conclusion with respect to particular circumstances. In other words, why would you even look at circumstances?

A You made reference to a violation?

Q Yes.

A And most violations involve numerous circumstances. And I think that most law enforcement agencies consider all circumstances in dealing with that violation. That was the substance of my testimony and it would apply to any violation anywhere.

Q All right. But, I posed the situation where there may have been a substantial or significant net fishery outside [60] the 3-mile limit wherein violations by the fishery of the applicable laws, whatever they were, may have occurred. Then I asked you would you attempt to enforce the White Act and its regulations against such individuals who were otherwise in violation of the law and I believe you testified it would depend on the circumstances.

A Oh, on restate your question, I can only state that it was my understanding and belief that we did not have jurisdiction outside the 3-mile limit which would lead to the logical conclusion that we would not enforce the law. And I can't recall any specific instructions or any incidents involving such instances in such a situation.

Q And, again, this is your testimony even if there should have been a significant drift net fishery conducted beyond the 3-mile limit?

A Yes.

Q Did you ever conclude where in Cook Inlet the 3-mile limit existed?

A Not personally.

Q Did you in your attempts to enforce the laws in Cook Inlet ever conclude that any part of Cook Inlet under your standard was inland waters of the United States or territorial waters of the United States? What rule would you have applied [61] in order to determine where in Cook Inlet or over what portions of the waters in Cook Inlet your authority existed?

A Generally, within three miles of the main shoreline.

Q All right. And was there any point in Cook Inlet where you considered that the area from shore to shore was inland or territorial waters?

A I'm sure there were some areas but I can't remember exactly where they were. Up toward the head of Cook Inlet, but I can't recall what definitions were applied. It might be determined by measurement on the map.

Q Well, you testified to a conclusion which was reached by you relative to the territorial jurisdiction which you had?

A Not by me. When I speak of "me," I speak of the regional directorate of which I was a part.

Q It is a conclusion that you had no jurisdiction beyond the 3-mile limit. Now, would you have then, in effect, said that up to the point where the distance from shore to shore is more than six miles you had no jurisdiction? Was that how you would have interpreted this?

A As I recall, that would have been the method used.

Q That would have been the method. Are you familiar at all with the geography of the Inlet?

A Yes.

[62] Q Are you familiar with the location of Point Possession on the Kenai Peninsula?

A No.

Q With the location of Fire Island?

A In a general way. It has been a long time since I have been there.

MR. CRANSTON: I am going to ask that the reporter mark as Deposition Exhibit 1 U.S. Coast and Geodetic Survey Chart 8502, 16th edition, July 4th, 1970, corrected through notice to mariners 27/70.

(The document was marked as Defendant's Deposition Exhibit 1, for identification.)

BY MR. CRANSTON:

Q I'm going to hand you what has been marked for identification Deposition Exhibit 1 and ask you where in the area described as Cook Inlet on that map you or

your agency considered the line within which Cook Inlet was inland or territorial waters of the United States?

A I don't think we considered it on those bases. Can you be more specific?

Q Well, let me pose a hypothetical then. I will refer you to Point Possession which is indicated on this map.

A Yes.

[63] Q At the northern tip of the Kenai Peninsula.

A All right.

Q If there had been any violation of the White Act regulations more than three miles from any shore or [*sic*] Point Possession or from Fire Island, which is also indicated on the map—

MR. RASHKOW: All right, I will have to object to this as a hypothetical question not based on facts which are already in evidence.

MR. CRANSTON: All right.

BY MR. CRANSTON:

Q But based on your interpretation of the law as you understood it, had there been such a violation, would you have enforced the drift net regulations or the White Act regulations against American fishermen in that area?

A I don't recall the jurisdiction boundary up in that area.

Q Well, I believe reference to the scale of the map which would disclose that from shore to shore the Point Possession area is in excess of six miles. The map, of course, would speak for itself on that point but I believe that is the case. Would you have made any attempt to enforce the fishing regulations under the White Act more than three miles off the [64] shore of Point Possession?

A I don't know. It is my recollection that there was a point somewhere in Cook Inlet above which it was generally considered to be territorial waters regardless of distance from shore, but I can't sight where that was.

Q Well, in other words, now you're testifying that there were circumstances with respect to Cook Inlet where

you did not strictly apply a three mile limit, is that correct? You took other factors in consideration.

A I'm saying it is my recollection that there was some point in Cook Inlet above which all waters were construed to be subject to the White Act, that is true. My previous comments with relation to Cook Inlet is with the lower portion here.

Q "With the lower portion." All right.

A Which is where I understood these fishing boats were present.

Q Was the standard which was used to determine whether or not portions of Cook Inlet were inland waters based, as I believe you earlier indicated, on a rule which would close the 3-mile limit at the point where the distance from shore to shore was six miles across or was it some other standard?

A I can't recall the basis on which that premise was established.

[65] Q What standards did you ever use, then, to determine with regard to particular portions of Cook Inlet where you would enforce the fishery laws? Did you have areas of the Inlet, any portion of the Inlet with which you were concerned in respect to violations?

A I think there were some areas set out in the fishing regulations. I can't recall the details of it.

Q Well, were you concerned with enforcement of the fishing regulations under the White Act at any point or points south of Kalgin Island?

A I think so, yes.

Q You were concerned with enforcement of the fishery laws at point or points south of Kalgin Island?

A Yes, very definitely.

Q All right. Would you have been concerned with enforcement of the White Act and the fishery laws at any point more than three miles from the southerly tip of Kalgin Island?

A More than three miles from the southerly tip?

Q This is Kalgin Island here.

A I realize that, but this is also more than three miles south.

Q My question is at any point more than three miles south of Kalgin Island in the water area of Cook Inlet, would [66] you have been concerned with enforcement of the White Act regulations?

A I don't think I understand your question.

Q All right. Let's take for an example the "T" in Cook Inlet.

A Right.

Q Were you concerned with enforcement of the White Act and the regulations promulgated under that act with respect to, say, drift net fisheries in that area? I'm referring to the "T" in Cook Inlet.

A It is my understanding and recollection that our jurisdiction did not extend over three miles offshore in lower Cook Inlet.

Q Well, now, did you consider the area encompassed by that "T" as lower Cook Inlet?

A I can't recall if a determination had been made. There are shoals and a buoy there and I can't recall whether there was a determined point or not. I think there is even some exposed obstructions there.

Q Let's take, for example, going north from the "T" appears the figure 40, and then above it the figure 25. Let's look at that figure 25 which is in a straight line above the "T" in Cook Inlet. Would you have been concerned with the [67] enforcement of the White Act regulations against anyone in that area?

A I can't be sure.

Q I'll place a circle around the 25 which I referred to on Exhibit 1. Would you be concerned with the enforcement of the White Act in that area?

A I can't recall what determination—the area, or the line, I should say, where it specifically laid, although I do recall there was a line across Kenai, across Cook Inlet, above which all waters were considered to be territorial waters.

Q Did you ever see a document with such a line drawn on?

A I can't recall.

Q But you just testified to a line?

A No, I said it was my understanding that there was an area of upper Cook Inlet above a certain described area which—

Q You are changing the word "line" to a "described area."

A Well, either one.

Q Where did you get this understanding?

A Well, all right, I have a recollection that there was such a determination. I have no more knowledge of it.

[68] Q Did you not, sir, consider the location of this area pertinent to your responsibilities as the person second in command of the law enforcement with respect to fisheries in that area?

A Yes, I presume it would be pertinent.

Q But your testimony is that you do not know where such a line existed?

A I was not personally there.

Q Well—

A And I can't recall having seen it delineated or described. This was my understanding there was a point, a portion of upper Cook Inlet.

Q Did you leave, then, the matter of where the regulations would be enforced in any part of Cook Inlet to the agents in the field?

A Yes.

Q So your testimony is that whatever the decision of the agents in the field was with respect to the enforcement of these laws reflected the position of your department?

A No.

Q Well, you just testified that you left the decision as to where to enforce these laws to your agents' discretion. What do you mean by that?

[69] A I mean by that that they were given all the information that was available on it and insofar as the regulations are concerned and policy, if any existed, and from that point on, they carried out the application of the regulations and enforced the regulations. What they did, I couldn't testify unless I was personally there. I was not.

Q Was there any instance of which you are aware where your agents in the field enforced the fishery laws against Americans, anyplace where your agents enforced fishery laws against Americans in Cook Inlet, where you or someone in your department concluded that they had no jurisdiction to enforce those laws?

A I can't recall it.

Q Well, are you aware of any? Are there any that you know of, any instance?

A No, I'm not aware of any.

Q In the normal course of events had your agents in the field acted in areas which were beyond their jurisdiction or your jurisdiction or your agency's jurisdiction, would that have been brought to your attention?

A Actions in what manner or in what—

Q Enforcing the laws against Americans in Cook Inlet, if they had enforced them or if they had done anything, stopping [70] vessels, apprehending vessels in areas of Cook Inlet where they should not have been doing this, would that have been brought to your attention?

A Not necessarily so.

Q If they had filed court actions with respect to Americans in portions of Cook Inlet not within their jurisdiction would that have been brought to your attention?

A Possibly. Not necessarily so.

Q Would it have been brought to anybody's attention?

A It certainly would have been brought to the attention of the court and very likely the United States attorney.

* * * *

[3] WILLIAM TERRY,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the Notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?

A I am William M. Terry.

Q What is your address?

A At home?

Q Well, that is fine, your home address.

A 10212 Lawyers Road, Vienna, Virginia.

Q What is your office address?

A The Commerce Building. I am the Director of the International Affairs Office in the National Oceanic and Atmospheric Administration in Commerce.

Q What is your age?

A Fifty.

Q Have you ever had any former occupations with the United States Government in connection with fisheries?

A Yes.

Q Would you describe what those have been?

[4] A On the Washington scene I joined the Fish and Wild Life Service in 1951 in International Affairs, and moved up in the International Affairs Business Fisheries and Wild Life until about two years ago, when I became Acting Deputy Director of the Bureau of Commercial Fisheries. I have been in that position until just this week when I became Director of the International Affairs Office in NOAA, the National Oceanic and Atmospheric Administration.

Q I would like to direct your attention specifically to 1957, February, and ask you if you at that time participated in any conference with the Canadian Government or representatives of the Canadian Government concerning fisheries?

A Yes, a Seattle conference, which I suppose is the one you are referring to.

Q Yes. Would you explain what your role in that conference was?

A Yes. At that time I was, in effect, the number two man in the Fish and Wild Life Service, International Affairs Office, Fish and Wild Life Service then, and they

consisted of Assistant Secretary, Commissioner and two bureaus; the Bureau of Commercial Fisheries and Bureau of Sport Fisheries and Wild Life. In the Commission's office there were several staff offices. One was Bureau of International [5] Affairs and I was number two man. As such I participated in pretty much every international conference relating to fisheries and wild life, usually as adviser to the senior Fish and Wild Life Service man present, although sometimes I was that myself.

Q All right, now, specifically with regard to this Seattle conference, what was the purpose of this conference?

A The primary purpose of the meeting was to work out with Canada the establishment of a legal regime which would have the effect of prohibiting the development of net fishing for salmon in the ocean. I use the phrase very roughly when I say "in the ocean."

Q Was such a regime worked out at this conference?

A Not entirely, no, but it was moved along quite a ways.

Q Did the United States at any time during the conference or subsequent to the conference furnish Canada with any set of maps or charts?

MR. BRADLEY: I object.

BY MR. CRANSTON:

Q All right, furnish Canada with any set of maps or charts which would indicate this legal regime?

A Yes.

[6] MR. CRANSTON: I would like to have this copy of a United States Coast and Geodetic Survey Chart 8502 with the notations in the lower left-hand corner 44-8/4, 9/27; 45-1/9, 7/28; 47-6/30, 9/29; 49-6/20; 50-9/4 marked and identified as Defendant's Exhibit 1.

(Document marked Defendant's Deposition Exhibit No. 1 for identification.)

BY MR. CRANSTON:

Q Mr. Terry, I am going to place before you what has been marked and identified as Defendant's Exhibit 1 to

this deposition which is a map of Alaska, South Coast, Cape St. Elias to Shumagin Islands with a line drawn on it and ask you if this represents the line which you described as having been furnished or a portion of the line which may have been furnished to the Canadians after the 1957 Seattle conference?

A Given ten or twelve years since I last saw these charts, I would have to say I think so. But I am in no position to say that is the line. It is a long time since I have looked at these charts.

Q All right. Did you at any time after the conference look at charts which would have had this line on it?

A Yes.

Q And as you look at this line now, are you able to [7] tell whether this line differs in any way from the charts which you looked at after the Seattle conference?

A No, my recollection of the lines isn't that good.

Q Would this line in all probability be the line which was furnished to the Canadians?

MR. BRADLEY: Object. It is a leading question.

MR. CRANSTON: I would still like you to answer.

THE WITNESS: I wouldn't know how to calculate a problem like that. My problem is that I last saw these charts probably sometime in 1958 and my memory of the lines and where they were drawn just isn't that good. So, I have no means of calculating.

BY MR. CRANSTON:

Q Did the line which you saw follow the Alaska Coast line?

MR. BRADLEY: Object. It is a leading question.

MR. CRANSTON: All right. I will continue, though.

BY MR. CRANSTON:

Q Did the line which you saw follow the Alaska Coast line generally on a headland-to-headland basis? Is that the approach used in drafting this line?

A You asked me two questions.

Q All right, first of all, what was the approach used [8] by the Americans in drawing the line furnished to the Canadians?

A I would have to explain this in some detail so we understand what we are talking about, okay?

Q Fine.

A The exercise we were engaged in at that time and the purpose of the whole business was to control what we saw as the development of new high seas salmon fisheries. Back in the summer, as I recall 1955, two years before this, more or less, there had been such a threat of seiners operating in the sea off Port Moller, way out beyond any existing fish areas which indicated to us here was a new fishery developing and if we permitted it to develop we would have serious conservation problems and some tough economic problems in addition to the new fishing industry atop of the already existing industries. The Fish and Wild Life Service saw in the ensuing year the three West Coast states, California, Oregon and Washington, became concerned about this because a lot of fishermen come from those states and in addition the territorial people in Alaska became concerned about it. As I recall, the North Pacific Fishery Commission also become concerned about it. Altogether, we decided in the United States that we would try to take action which would involve Canada to prevent the [9] development of these fisheries by using the regulatory authority which the Federal Government had under the North Pacific Fisheries Act and state legislative authority which they would get to prohibit net fishing specifically essentially beyond the surf. We had to get Canada in this Act and this was the primary reason for calling that conference. At the conference we had already gotten action or sufficient promise of action by the three state governments that we were able to show the Canadians at the conference what amounted to a surf line along the United States Coast, a line drawn really right along the surf, except where there were major inlets and we jumped across these. The Canadians in their preparation had developed the same kind of thing, essentially a surf line along the West Coast of Vancouver Island and then in Hecate Strait a line which was not a surf line but which tended to connect the islands. The basis for their line, I don't know. We had not, for that conference, prepared a line along the Alaska Coast for a

couple of reasons. One was we were busy doing other things and, secondly, it turned out to be more complicated than we had originally thought. One thing we found, of course, when we began to look very carefully at the Alaska fishery was that a surf line concept wouldn't work in Alaska, the reason being the Alaska fisheries were in characteristics and in location quite [10] different than the fisheries on the Canadian Coast and the fisheries along the Continental Coast of the United States. In this major respect we had instead of confining the fisheries to the creek mouths we had deliberately pushed the fisheries out of the creek mouths, the reason being that many of the narrow creeks in Alaska was the easiest thing in the world for a perch or gill seiner to set a gill net stretched across to catch all the fish at once. So, for an easy enforcement problem we shoved the fishery out in some cases a matter of a few hundred yards and in some cases a half a mile or more out from the mouth. This meant that a surf line, a real surf line in Alaska, and that wasn't what we were there for. We explained this proposition to the Alaskans and said that we would put down on charts as quickly as we could for them—

Q Excuse me. Did you mean to use the word Alaskans or Canadians?

A Canadians. We explained to the Canadians we would put down as quickly as we could on charts a line, the purpose of which would be to prevent the development of new fisheries but which would not have any adverse effect on the existing fisheries and we told them this would not be surf lines. When we came around to drawing the line—and this by the way was done by our people in Alaska. I did not participate in [11] this myself so I don't know for a fact how they did it. I know only approximately how they did it. They more or less, and maybe less than more, used the then existing management districts as a basis, the rationale being the management districts again more or less described the areas in which the fisheries were then taking place. So, that was the approach. The approach was to draw the line in such a way as to protect the existing fisheries and this, of course, was related to existing management districts.

The result was a series of lines which in some areas certainly jumped from headland to headland and in other areas I suspect followed the sinuosities of the coast. I don't recall exactly.

Q Do you know who in Alaska prepared the charts or drew the lines?

A Yes. Clay Scudder and John Gharrett. The line is known now as the Scudder-Gharrett Line. That is what it was known as shortly thereafter.

Q What, if anything, was the Canadian response to the chart which was furnished them by the United States?

A The charts were long delayed in getting to Canada and as I recall it was either the late—late in 1957 or early in 1958 before we finally got the job done and in October of 1958 we got a response from the Canadians saying [12] that they had studied the charts and felt that some further look at the problem, joint look at the problem was necessary and they made specific reference to some problems not in Alaska but down the Strait of Juan de Fuca. There was a problem of where the surf line would be drawn across the Strait resulting from migratory patterns of fish of United States origin, Puget Sound origin and fish of Canada origin, Fuca and so forth, and they called for a second shot at it.

Q With respect to the particular line drawn on the Alaska Coast, did the Canadians call for a second look at the problem?

A My recollection is that they did in Southeastern but I would be hard put to go any further than that.

Q Is the line which was drawn in 1957 and submitted as you say sometime thereafter, presently operative with respect to the North Pacific salmon fishery and the prohibition of nets?

A In principle, yes. There may have been adjustments in it over the years. There were adjustments in the Straits of Juan de Fuca as a result of subsequent meetings with the Canadians. But my recollection is that no major changes were made in the line.

Q Is it fair to say that the line has then been [13] accepted by the—

MR. BRADLEY: Object.

BY MR. CRANSTON:

Q —by the parties?

MR. BRADLEY: Excuse me.

BY MR. CRANSTON:

Q Is it fair to say that the line has been accepted by the parties to the 1957 Seattle Conference, that is a along the Alaska Coast, as the line which would be adhered to with respect to the salmon net fishery?

A Yes.

Q With respect to the particular means of enforcing the prohibition of using nets to fish for salmon on the high seas, who off the Alaska Coast would be prohibited from fishing with nets on the high seas? That is, citizens of what countries or states?

A Well, persons subject to the jurisdiction of the United States. That is a Federal regulation backed up by state regulation, the state regulations subject to all persons in the jurisdiction of the United States.

Q Did the treaties operate also to prohibit Canadians from fishing with nets on the high seas?

A Which treaty?

[14] Q The North Pacific Treaty or any statutes.

A As a result of our discussions with the Canadians in the Seattle session and the later ones, what we had was a kind of—I am not sure now. It may be an executive agreement. I think it was really an informal agreement that the two governments would move unilaterally in a parallel way; thus, Canada implemented its part of the deal by permitting net fishing seaward of the surf line along Vancouver and the Hecate Straits. We did it by a combination of Federal regulation and initially three state laws and now subsequently the four state laws, so there was parallel prohibition put into effect in the two—

Q The fourth state law would be what state?

A Alaska.

Q Specifically, then, off the Coast of Alaska, would Canadians be permitted to fish for salmon with nets seaward of this line?

A No. As I understand it, a Canadian Ordering Council.

Q And then is it the present United States' position that fishing with nets is permitted landward of the line? Inside the line?

A Except where otherwise the regulations prohibited. That is the Federal regulation. There is only the one which [15] prohibits net fishing—well, prohibits all fishing now, as I recall, except trawling prohibits all salmon fishing except trawling seaward of the line. The Federal regulation is silent on the question inside, and that is whatever the state regulation is saying where they apply.

Q So, then, inside the line the type of fishing that is permitted would depend on the local state legislature regulations, is that—

A As a practical matter. Not entirely a legal matter but as a practical matter. That is to say, the nature of fishing in Alaska is such, salmon fishing particularly in most of Alaska, is such that you can't fish there without using Alaska as a base. Thus, Alaska regulations can be made to apply to citizens of the State of Washington, California, Oregon, even though those regulations might not otherwise apply to them; for example, beyond the territory seas of the United States where Alaska statutes apply only to Alaska citizens. As a practical matter, most people fish up in this area, let us say a gill netter from the State of Oregon—

Q You pointed to the map.

A Let us say in the Kodiak area. The State of Oregon gill netter fishing in the Kodiak area within the territory sea of the United States would be amenable or subject to Alaska [16] regulations. Outside the territory sea of the United States he wouldn't be. But as a practical matter in order to operate he has to operate out of the Kodiak base. So, the practical effect is that fishing inside the line is controlled by state regulation but legally they are two different kinds of regulations.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. BRADLEY:

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[30] Q Were the lines Mr. Scudder and Mr. Gharrett drew intended to correspond with the territorial sea of the United States or to the outer limits of internal water?

A No, no connection.

Q For what purpose were the lines that Gharrett and Scudder drew used?

A To prevent the development of fisheries outside the areas where there were already fisheries.

Q Where were the lines prepared?

A In Juneau.

Q And what happened to them after they were prepared?

A Well, they were sent to the Bureau of Commercial Fisheries here in Washington and some review was made of them and they were then transmitted to the Department of State and by the Department of State transmitted to Canada through diplomatic channels. As I recall it, there were two external in Canada and then—

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[3] THOMAS H. WARDLEIGH,

a witness in the above-entitled cause, was called for examination by counsel for defendant, and after having been duly sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your name, please?
A Thomas Herbert Wardleigh.
Q What is your present age?
A 45.

Q And what is your residence?
A 5808 Kingston Road, Oklahoma City, Oklahoma 73122.
Q What is your present occupation?
A I'm a pilot for the Federal Aviation Administration.
Q And how long have you been engaged in this particular occupation?
A In Oklahoma City, since July of 1969.
Q What was your occupation prior to July of '69?
A I was in the FAA regional staff in Anchorage, Alaska.
Q Now, at any time in your career have you been employed by the Fish and Wildlife Service of the United States?
A Yes, sir, from 1951 through 1959; 8 or 9.
[4] Q Where were you employed?
A In Anchorage, Alaska.
Q Was this your first employment in Alaska?
A Yes.
Q Where had you lived prior to going up to Anchorage?
A In Seattle, Washington.
Q During the period of time, 1951 through 1959, where were you stationed?
A In Anchorage.
Q What were your general duties?
A I was a pilot and also I was responsible for the management of the aircraft and engine repair shop there.
Q And once again, did I correctly state the agency for whom you were employed?
A Yes. U. S. Department of Interior, Fish and Wildlife Service.
Q And was it known as the Fish and Wildlife Service through this entire period of time or did the agency change?
A No. it was the Fish and Wildlife Service through that period of time.
Q During the period 1951 through 1959, who was your immediate supervisor?

A Theron Smith.
[5] Q And what was his function?
A He was supervisor of the aircraft division for that agency.

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[10] MR. CRANSTON: I request that we have marked as Deposition Exhibit 1 U. S. Coast and Geodetic Survey Chart 8502, the 16th edition, July 4th, '70, corrected through notice to mariners 27/70.

(The document was marked as Defendant's Deposition Exhibit 1, for identification.)

BY MR. CRANSTON:

Q Now, Mr. Wardleigh, I'm going to hand you what has been marked as Deposition Exhibit 1 and ask you if included within the area depicted on the portion of the map before you is the area over which you transported patrol personnel or enforcement personnel of the Fish and Wildlife Service?
A Yes, it is.
Q Now, with particular reference, if you can, to points on the map, could you define generally with respect to Cook Inlet the areas over which you transported personnel?
A Would you restate the question, please.
Q All right. With reference to particular points on the map, would you describe, first, the southeasterly boundary, [11] so to speak, of the area over which you patrolled?
A We occasionally patrolled as far as Cape Douglas itself and on the south side of the Kenai Peninsula. We had camps in Port Dick and the Point Gore area, so we did patrol as far as Point Gore and Nuka Island and Nuka Bay on the Kenai Peninsula side of Cook Inlet, and occasionally as far as McNeil River primarily in the Cape Douglas area. We rarely went to Cape Douglas or occasionally to the Douglas River, more frequently to McNeil River.
Q Now, on your patrols, did you patrol over any of the water area between the points you have described and up the Inlet from the points you have described?

A Yes.

Q First of all, what was the purpose of the patrol activities?

A Primarily we were concerned with licensing of the traps and the boats and the set net fishery and to observe that they conformed to the hours of closure and opening and to the established distances between units of fishing gear, to make sure that the required spacing existed between set nets and fishing boats and that they did not violate the closed areas or stream mouths along the way.

Q Were you also at all concerned with what we call the [12] drift net fishery?

A Yes.

Q And—

A The principal concern there being the distance between boats and the hours of closure that they did not fish when the zone was closed.

Q And the enforcement personnel who you transported were with you for the purpose of observing compliance with these regulations in regard to the drift net fishery?

A Right.

Q And over what portions of the area which you described did you patrol to determine whether or not these regulations in the drift net fishery were being complied with?

A We went wherever the drift boats appeared each day, and that primarily would be north of a line between Chinitna Bay and Anchor Point. That's where the drift net fishery took place.

Q In these patrols with respect to the drift net fishery did you concern yourself with the question whether or not the particular boats or the fishing gear were more than three miles offshore?

A No, I don't recall that we did.

Q Is it fair to say then that you would patrol the area—

[13] MR. RASHKOW: I object. That's a leading question.

MR. CRANSTON: All right. Well—

BY MR. CRANSTON:

Q What then determined the area over which you would patrol to observe compliance with regulations?

A We tried to go where the boats were or where we felt that the fish would be.

Q I see. During your period of time on Cook Inlet did you on any of your patrols observe any foreign fishing activities in the area denoted on that map as Cook Inlet?

A I cannot recall that we did.

Q Now, you say that you patrolled or transported patrol personnel from the period of time 1951 through 1959, is that correct?

A Yes.

Q Did you generally enter into any discussions with those persons who you were transporting relative to foreign fishing activities?

A Yes.

Q Had any policy relative to foreign fishing activities been brought to your attention or discussed between you and other personnel?

MR. RASHKOW: I will have to object. Whatever he says [14] will be hearsay.

BY MR. CRANSTON:

Q Had any policy ever been discussed?

A We speculated about it between us. I don't recall that a policy as such was known to me.

Q All right. Generally, with respect to the persons who you were transporting for patrol purposes, would it have been normal for you to discuss a policy if one had been established?

A Yes, I believe it would have.

Q And you did not discuss such a policy, or is that what you said?

A We discussed between us what would we do if we saw a fishing vessel and I don't know that this was ever resolved.

Q And did you ever, in fact, see a fishing vessel?

A I cannot recall a specific occasion when we did.

Q So you never had to put any such speculation into practice?

A No.

MR. CRANSTON: I have no further questions.

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. RASHKOW:

* * * *

[16] Q Do you ever recall during any of your patrols whether or not you ever made an actual seizure or an actual arrest of [17] a vessel more than three miles from shore in Cook Inlet?

A I just don't remember either way.

* * * *

[2] R. CHARLES WILSON,

being first duly affirmed, was examined as a witness on behalf of the defendant, as follows:

DIRECT EXAMINATION

BY MR. CRANSTON:

Q Would you state your name?

A Robert Charles Wilson.

Q What is your residence?

A 2714 E. 18th, in Spokane.

Q And what is your age?

[3] A 44.

Q And what is your occupation?

A Right now I am disabled.

Q I see. Does that mean you are more or less in a retired status?

A Well, I am hopeful it is recuperating from an illness.

Q I see, all right.

A And that it is not permanent.

Q Would you go through what occupations you have had up to the present time?

A Well, my main occupation was as a fishery enforcement officer, both temporary and permanent, in Alaska from 1951 to 1962, but skipping 1953 and 1954.

Q And who was your employer while you were a fishery enforcement officer?

A The first was Holger Larsen, and then Jack Scarey, John Scarey.

Q Well, basically you were an employee of the Federal Government, is that correct, the United States Government?

A Yes.

Q And what agency were you under?

A The United States Fish and Wild Life Service, under the Interior Department.

Q Then you were directly under—Holger Larsen was one of them, and John Skerry was the other?

[4] A Yes.

Q Did you have any others besides those two?

A Well, not in the Fishery and Wild Life Service. I believe those were the District Supervisors I had at those times.

Q Now, specifically, when did you first go into this work in Alaska?

A In the spring of 1951.

Q And where were you stationed?

A That year I was stationed on the beach at Granite Point, and later in a small bay in Tutka Bay that I can't remember the name of right now.

Q These locations you described are all you can relate in this record?

A Yes.

Q During the 1951 season, then, you were assigned to what area of the Fishery and Wild Life Service?

A Excuse me, I made a mistake I would like to correct. That small bay was in the Kachemak Bay, not Tutka. Kachemak.

Q During this time you were assigned to the Cook Inlet area in the Fish and Wild Life Service?

A Yes.

Q And specifically in 1951 what was your duty?

A In the first part, at Granite Point, it was to check set [5] netters, to make sure that they were using legal gear and were legal fishing boats.

Q This was more of a shore-type duty?

A Yes.

Q You said that was during the first part of the 1951 season?

A Uh-huh.

Q What else did you do in that year?

A Then I was moved down to Kachemak Bay. I was guarding the mouth of a stream, to keep the boat fishermen from taking the fish out of the mouth of the stream. And it was a shore job, also.

Q Your earlier portion of duty was at Granite Point?

A Uh-huh.

Q What side of Cook Inlet is Granite Point on?

A The west side.

Q And approximately where would that be located?

A About fifty-miles southwest of Anchorage, and oh, I suppose, about 20 or 30 miles northwest of Kenai.

Q Did you have any other duties and responsibilities, other than what you have told us of?

A Not that year.

Q During the 1951 year?

A No.

Q Did you ever engage in any patrol, water patrol or air [6] patrol of Cook Inlet during that year?

A Not that year.

Q Did you return to Cook Inlet in the following year?

A Yes.

Q And that would have been 1952?

A Right.

Q All right. Giving us a broad outline, what—. First of all, how many years, how many seasons, were you assigned to Cook Inlet, from 1952 on down?

A Well, it was every year except 1953 and 1954, right up to 1960 when I transferred to the State.

Q So you were in the Cook Inlet area in 1952, then 1955, 1956, 1957, 1958, 1959?

A And '51.

Q And then you became an employee of the Alaska Department of Fish and Game, in 1960?

A Right.

Q Generally, throughout the years which you have mentioned, commencing in 1952, were your duties pretty much the same?

A Yes.

Q Could you describe what those were?

A The duties were pretty much the same in 1951 and 1952, but in 1955 it changed. That year I went to boat patrol instead of being on the beach.

[7] Q I see.

A And from then on it was almost constantly boat work or airplane work.

Q Could you give the names of the boats that you were assigned to?

A I think in 1955 it was the Steelhead.

Q What about the subsequent years?

A No. Let me see, now, I am not real clear right now, but—

Q Well, the best you can remember.

A In 1955 and 1956 I spent one year on the Steelhead and one year on the Grayling, but I don't remember which year was which. And then in the following years I spent time on the Grayling again, several times, and on the Teal, and on the Kitty Wake, and on the—oh, there was a big 90-foot scow up there. It was called the—

Q Was there a boat called the Widgeon?

A Widgeon, that was the one. And I think that's all of them, but I can't give you the exact dates on any of those.

Q From the time you were assigned to these vessels, were you the prime enforcement officer on the vessel?

A Yes, usually.

Q But was there a captain of the vessel also?

A Yes. The boat operator and an enforcement officer shares the responsibility for the operation. And I, [8] as enforcement officer, directed the operations, and the boat operator did the operation of the boat.

Q Did he have any enforcement duties?

A No, no. He had authority, but he didn't—he didn't use this authority while I was aboard, because that was my job.

Q Do you remember the names of the various boat operators?

A Yes. Ralph McGee, who ran the Grayling, and Max Bowman, who operated the Steelhead.

Q Do you know Mr. Bowman's whereabouts at this time?

A I don't know. He was a man from the Southeast somewhere, but I don't remember.

Q Any others?

A Howard Marks, on the Teal, and, oh, Fred—

Q Are you trying to think of Fred Headley?

A No, that was a different Fred that ran the Kitty Wake.

Q His name was Fred?

A I can't tell you his last name. Ask Ron Naab.

Q When you were on your patrol in the vessels, what determined where you would patrol? Did you reach this decision, or did the boat operator reach this decision?

A Well, if it was a matter of law enforcement I determined it, but if it was a matter of safety, weather, he determined it.

Q You also mentioned you flew aircraft patrol in Cook Inlet?

[9] A Yes, but not as a pilot.

Q But as an enforcement officer?

A Yes.

Q Could you describe the persons with whom you patrolled, who the pilots were?

A Yes. Mainly it was Tom Wardleigh and Theron Smith. And they had several others for short-time duty, but they were the two main ones.

(Deposition Exhibit No. 1, being Chart, was marked for identification, and is attached hereto.)

MR. CRANSTON: This is U.S. Department of Commerce Coast and Geodetic Survey, Chart No. 8502, 16th edition dated July 4, 1970, corrected thru Notices to Mariners 27/70.

A The captain of the Kitty Wake was Fred Barnett.

Q Do you know anything about his whereabouts?

A The last I can remember he had transferred to the FAA and was working in Cold Bay, somewhere in there.

Q Mr. Wilson, I will hand you a portion of the chart 8502 which has been marked as Deposition Exhibit No. 1, and ask you if depicted on that chart, or if included within the areas of that chart, are the portions of Cook Inlet over which you carried out your enforcement duties?

[10] A Yes, it is all on there.

Q Now, by reference to the chart, can you describe what areas in Cook Inlet you carried out your enforcement duties? You may use geographical landmarks on that chart to refresh your recollection, and use that as a base?

A All the way from the head of Cook Inlet (indicating)—

Q When you point to something describe it, because pointing isn't in the record. By "the head" you pointed to a point, Point Mackenzie, or thereabouts?

A And that included Knik Arm and Turnagain Arm, and here it covered the whole inlet on both sides as far as the Barren Islands on the east, to Kamishak Bay on the west.

Q Did you ever patrol as far south as Cape Douglas?

A No.

Q In your patrolling, did you patrol areas which were more than three miles from the shore areas of Cook Inlet?

A Yes.

Q And did you do this as far south as the areas which you just described?

A Yes.

Q What was it—what determined the areas in Cook Inlet where you patrolled? Did you rely on written instructions, oral instructions, or what caused you to patrol these areas?

[11] A It was oral instructions, and it was—every day determined—every day the patrol was determined by the probable areas of fishing activities.

Q Were you familiar with the fishing regulations in Cook Inlet promulgated under the White Act, that is, for Alaska?

A Yes.

Q Did anything in those regulations determine the areas of your patrol?

A No. As far as I remember, we just patrolled the areas of probable fishing activity, and with the idea of enforcing whatever regulations or laws were pertinent to that area.

Q I see. Was there probable fishing activity in Cook Inlet more than three miles from the shoreline of the Inlet?

A Yes.

Q And what type of fishery was that?

A Salmon drift and gill net.

Q Where in the Cook Inlet area did the salmon drift gill net fishery exist, where was it carried on?

A It was carried on mainly between the area of—south of West Foreland and East Foreland to—oh, the area straight across the Inlet from Ninilchik on the south.

Q Did you regularly—did you patrol this area?

A Yes.

Q Where, with reference to distance from either shore, if you [12] can answer, was the fishery carried on south of Kalgin Island?

A Well, it was an area right down the center of the Inlet, probably five miles wide or so, but I don't remember how far that was from shore.

Q When you say the center of the Inlet, you mean approximately equidistant from either shore?

A Yes.

Q Did you ever make any arrests, or stop any fishing vessels, board any fishing vessels in Cook Inlet, pursuant to your duties?

A Oh, yes.

Q Did you make any such boardings in an area south of Kalgin Island, if you can recall?

A We made so many checks and boardings in the areas both north and south of Kalgin Island, that I can't really say that I did or didn't, but I—I must have. That was one of the heaviest fishing areas. But my

memory doesn't tell me right now whether I did or didn't.**

Q All right. But you do recall—you said you did make so many both north and south—by that you mean you did make some, but you can't remember specifically the instances?

A Right.

Q Did you concern yourself, when you made these boardings, with how far you were from any shoreline?

[13] A No.

Q What types of violations were you looking for or attempting to enforce or prohibit?

A Net lengths, proximity of nets to each other—they had a minimum distance that they were legally allowed—and there was a registration we had to check for.

Q What do you mean by "registration?"

A All fishermen had to register with their district office and declare what type of fishing they were going to do; and in return they were issued this paper registration and a metal plate to put on their boat, to identify them with the number.

Q Was this to enable them to fish in a particular district or area?

A No, this was to aid in tabulation of the fishing intensity.

Q Would it have been a violation of the regulations to fish without this registration?

A Yes.

Q Was the registration required of all fishermen that wanted to fish in any of the waters in Cook Inlet which you have described?

A Yes.

MR. CHARNEY: I object. The regulations would be—

[14] Q All right. Did you enforce the licensing requirement, or the registration requirement, as to any fishermen fishing the waters in Cook Inlet as you have described?

A Yes.

** See correction by witness, page 26.

Q Did you ever observe any foreign fishing vessels in Cook Inlet—let me qualify that—fishing in Cook Inlet?
A No.
Q Did you ever observe any Canadian halibut boats fishing in Cook Inlet?
A No.
Q Did you observe any Canadian Halibut vessels, other than those fishing in Cook Inlet—
A No. Well, say that again?
Q Did you observe any Canadian vessels that may not have been fishing in Cook Inlet?
A Yes.
Q Where did you observe them?
A I have seen them at anchor in Seldovia Bay, and I have seen them fishing offshore east of Chugach Islands.
Q By "offshore" do you have any idea as to how many miles offshore, with reference to more than three or less than three?
A Well, it could have been probably between three and five, somewhere around there. Those were just seen by me from airplanes. We didn't bother them. We didn't do anything [15] more than see that they were out there.
Q Now, were you ever given any instructions, either written or oral, with regard to a policy which should be followed with respect to Canadian halibut fishing vessels in Cook Inlet?
A No.
Q At any time in your experience in Cook Inlet, were you aware of any policy regarding Canadian halibut vessels fishing in Cook Inlet?
A No.
Q Do you recall ever having a discussion concerning such a policy with anyone?
A No.
Q Did you have annual conferences or meetings of the persons involved in the law enforcement in the Fish and Wild Life Service of Alaska?
A Yes.
Q Was this matter ever discussed at those meetings?
A Not that I can remember. I think I only attended one of them, though.

Q And that is—when would you have attended it?
A 1969, I think.
Q 1969?
A 1959.
Q Were you prior to that time given any instructions from [16] either Jack Skerry or Holger Larsen regarding this matter?
A No.
Q Or by anyone else?
A No. All I can remember about what we did, or what I did with regard to halibut fishing was to make sure no one jumped the gun on the season, and once in a while check the boats at Seldovia to see that they weren't selling undersized fish.
Q But this was with regard to Americans, is that right?
A Yes.

• • • •

[22] REDIRECT EXAMINATION

BY MR. CRANSTON:

Q Did you receive training by the Federal Government to prepare you for your enforcement duties in Cook Inlet?
A We were just lectured by the—by the agents in charge—before going out on the job.
Q This would have been Holger Larsen and Jack Skerry?
A Yes. And in some cases others, too.
Q Now, with regard to these Canadian halibut vessels which were waiting out their closed period, you thought you heard, [23] for fishing in Seldovia Bay, did you receive any information that these boats were going to be fishing for halibut in Cook Inlet?
A No.

• • • •

[3] ROBERT T. YINGLING

a witness in the above-entitled cause, was called for examination by counsel for Defendant, and after having

been duly sworn by the notary was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CRANSTON:

Q Would you state your full name, please?
A Raymond Thomas Yingling.
Q What is your present address?
A 4000 Massachusetts Avenue, Northwest.
Q Washington, D. C.?
A Yes.
Q And what is your present occupation?
A Oh, I am doing a little bit of practice, that is all.
Q I see.
A A little consulting in a case once in a while, if I can't get out of taking it.
Q What is your age?
A 73.
Q Now, have you ever had any occupations with the Federal government?
A Yes. I was with the State Department for, oh I [4] don't know, 49 years. I was with the Federal government a little more than 49 years when I retired in 1968.
Q What was your first position with the government?
A I don't really know. I mean it was a summertime thing.
Q I see. But you most of the time have been employed—
A I came to State in '20. Yes, October 1920 I came to State and I was with State until I retired in January 1968.
Q Were you ever with the office of Legal Adviser of the Secretary of State?
A Yes, I was Assistant Legal Adviser for many years.
Q When did you first take that position, do you recall?
A Well, when the office was reorganized and the position of Assistant Legal Adviser was set up, I was one

of the original Assistant Legal Advisers and I held that title until I retired. This may be probably 20 years.
Q So, roughly, sometime around 1948 or so?
A Sometime after the war.
Q You do have a law degree, then?
A Yes. I may have a couple of them; I don't know.
Q Where did you have your legal education?
A Georgetown University law school.
Q All right. Now, directing your attention to May 3rd [5] of 1962, what was your occupation?
A Assistant Legal Adviser.
MR. CRANSTON: Would you mark this as Exhibit 1 for this deposition, please?

(Letter dated May 3, 1962 from Abram Chayes to Frank Barry was marked Defendant's Exhibit 1 for identification.)

BY MR. CRANSTON:

Q All right. A letter dated May 3, 1962 from Abram Chayes, the Legal Adviser, to Frank Barry, Solicitor of the Department of Interior, has been marked as Defendant's Exhibit 1 for this deposition.
Mr. Yingling, I will hand you what has been marked as Exhibit 1 and I ask you if you recognize that.
A Yes, I do.
Q Would you tell me what the basis of your acquaintance with this letter is?
A I drafted it.
Q All right. Now, by drafting it, exactly what work of your own did you put in it to draft it?
A Well, I think the letter speaks for itself as to what work was done and what work was necessary to do to reach those conclusions.
[6] Q Specifically, did you do the work yourself, the research for this letter, or did someone else do the research?
A Do you have any specific research in mind or are you talking generally?
Q Generally, the research which formed the basis for this letter.

A I did some of it and some of it was done by an assistant.

Q Do you recall the name of the assistant who may have done this?

A No. No.

Q Would it have been an assistant Legal Adviser or someone else?

A No, it would have been somebody of lower rank.

Q I see. And you have no idea who this person may have been?

A I don't, because the number of my assistants varied from time to time and sometimes I had other people assigned to me who were not regularly assigned to me, who were assigned to me for some specific job like this, for instance. I mean we might have picked some young fellow out of the office and let him do this job. I can't answer that because this is over too long a period of time and these things varied too much.

[7] Q I understand we are talking about something that took place ten or so years ago.

A Yes.

Q Would the name of the person who assisted you in writing this letter be disclosed in any of the files of the Legal Adviser, do you think?

A It would be if he made a report in writing to me. The research that is referred to in this letter as involving the past records of the Department and the records of the National Archives was not done by me. The person who did that may have made some kind of memorandum report to me. I don't remember. He did make an oral report to me. My memory isn't clear as to whether he made a written report.

It is a completely negative thing, as you see by the letter, and it wouldn't have been much of a memorandum to write on it execpt to say what he did, and he found nothing.

Q Would it be normal for a written report or memorandum to be made to you with respect to research done by a legal assistant?

A Yes, if they found anything.

Q I see. And if they found nothing as a result of their research they would not make a report, is that correct?

A I didn't say they wouldn't; but they might not. [8] All I said was that in this particular instance I did not remember whether a written report was made. There was an oral report made.

Q I see. All right. Now, one rather preliminary question. So far as you are aware did the Legal Adviser himself, that is, Abram Chayes, do any of the research in respect to this letter?

A I think that is a question you had better ask Abram Chayes. I don't think that is a proper matter for me to comment upon.

Q Do you know the answer or are you saying you are refusing to answer the question?

A I am saying I don't think it is a proper question for me to answer.

MR. CRANSTON: Well, Mr. Charney, I feel as if what is proper or not proper should be—

MR. CHARNEY: Can I speak to the witness off the record?

MR. CRANSTON: Yes.

(Off the record discussion)

THE WITNESS: Ask me the question again, please.

(The pertinent question was read)

THE WITNESS: He did not.

BY MR. CRANSTON:

[9] Q I take it then, with reference to this letter, you were the person in the office of the Legal Adviser who had the primary responsibility for its drafting and content, would that be correct?

A That is right, yes.

Q All right. One other question. You were served, I believe, with a subpoena duces tecum—

A Yes.

Q —asking you to produce whatever records you had which were used to form the conclusion of this letter,

particularly, with reference to the records discussed in paragraph 2 of this letter. Do you have any records with you?

A No, I don't have any records at all.

Q And I take it that you kept no personal file with respect to any of the matters which you worked on while with the Office of Legal Adviser insofar as it affects this letter?

A I did not.

Q Now, referring to paragraph 3 of this letter where it refers to "an extensive search of the records of the Department" could you tell me what records of the Department were searched by you or by whoever did this search for this letter?

A Well, the Department has a record section. I don't know what it is called now. The person went there and tried to [10] find anything that was there that related to this question. Since the Department's records are retired after a certain number of years to the National Archives, he also went to the National Archives and searched for past years.

Q I see. Now, did the individual who made this search make any specific report to you orally or in writing relative to what files he did search?

A No.

Q So you are not aware yourself of what particular records were searched of the Department insofar as those records are described in paragraph 3 of this letter?

A No, not when you say "particular records."

Q Well—

A Can I go off—

Q Well, records in general. What records were searched? Do you know anything about what was looked at?

A No. I sent him to do the research and he did the research and reported to me. I don't know what he saw or what he didn't see.

Q Let's try to pinpoint it a little more. Was the search limited solely to records either in the possession of the State Department or State Department records which are now located in the National Archives?

[11] A Well, both.

Q All right. By that, I am trying to determine whether you know if records of any other Federal department were searched and looked at in order to form the basis of the conclusion in this letter.

A I don't know as a certainty because I didn't do the research, and I didn't ask that kind of question of the person who did. But I assume that he examined the State Department's records only, both in the Department, that is, the records still in the Department and the ones that had been retired to the National Archives. I wouldn't have expected him to search some record that had been filed there by the Internal Revenue Bureau, for instance.

Q What about, for instance, would you have expected him to search records of any other Federal departments such as the Department of Interior or any agency of the Department of Interior or Department of Commerce?

A No, not if those records are segregated. I don't know whether they are or not. I am not familiar with the National Archives' records, but if they are segregated according to departments I would not have expected him to look at anything but the State Department's records, because the letter from the Department of Interior was asking us to indicate the [12] State Department's view about these questions that had been raised.

Q I see.

A However, normally this type of thing is a matter that would have been handled by the State Department, not by the Department of Commerce or the Department of Justice.

Q You do not recall, then, any indication from the person who did the research that anything other than State Department records themselves were looked at in order to form the basis of this letter?

A I don't recall that anything was said about that.

Q All right. Did you yourself do any research in order to verify or supplement the work done by the assistant in this matter?

A No.

Q Did you look at any records of any Federal department other than State Department records?

A No.

Q And, I take it then, you did not look at any State Department records either?

A Not on that question. No, not on the matters referred to in that third paragraph on page 2.

* * * *

[15] Q In other words, the research that you did was research into such legal documents such as the case reports, perhaps, treatises, digests, and I suppose other legal aids which an attorney would normally look at, is that correct?

A That is correct.

Q Your research legally was confined generally to things such as that, I take it.

A Well, I don't know that I can say what it was confined to. I handled the Law of the Sea in the Department and had principal responsibility for it from 1950 until 1968 when I retired. Now, obviously there are some things I don't need to look up or don't need to research.

[16] Q But, your active participation with respect to the conclusion in this letter was based upon legal theory rather than factual discovery? This is what I am trying to get at.

A Yes.

Q Then, insofar as the facts which may have formed the basis or which would bear on the issue of Cook Inlet's being an historic bay, this was left by you to the legal assistant.

MR. CHARNEY: The record should indicate he said yes.

THE WITNESS: Yes.

* * * *

[18] Q My question is, approximately how long before May 3rd of 1962 was the letter from Mr. Barry received by your office?

A Well, the letter indicates that his letter was dated [19] April 17th.

Q All right. So—

A It would have been received maybe in a day or so after that.

Q So, that would indicate to me that approximately two weeks of research went into the formulation of the response to his letter, is that correct?

A Well, whatever the elapsed time there is, yes, two and a half weeks or whatever it is.

Q Now, approximately how long before May 3rd was, in essence, the final draft of this letter placed in your hands? In other words—

A It was my letter.

Q The letter is dated—

A I drafted it. You said the final draft placed in my hands.

Q Okay. Approximately when was all of the information from the legal assistant placed before you in order to enable you to form the conclusion of this letter?

A I don't know.

Q Would it have been a week before the drafting of the letter?

A No. I would just be guessing at that because I don't [20] remember. I mean, that is years ago. There was three weeks elapsed from the time, two and a half or whatever the records show, from the time the letter was received until I answered it. I don't know what day the assistant who did the research at Archives, for instance, gave me the results of his research. I don't know what day I drafted the letter, unless a carbon would show.

* * * *

[24] MR. CRANSTON: I am going to hand to the reporter for identification, as Deposition Exhibit 2, a letter dated July 3rd, 1969 from the Office of Legal Adviser to Mr. Shiro Kashiwa.

(Letter dated July 3, 1969 from Office of Legal Adviser to Mr. Shiro Kashiwa was marked Defendant's Exhibit No. 2 for identification.)

[25] BY MR. CRANSTON:

Q Mr. Yingling, I am going to hand you what has been marked Deposition Exhibit 2, a letter to Shiro Kashiwa, dated July 3, 1969 and ask you if you have any knowledge of that letter?

A I have seen a copy of that letter but that was after I left the Department. I had no knowledge of it until fairly recently when I saw a copy of it.

Q I take it by your answer then, you had nothing whatsoever, apart from the reference, of course, to your earlier letter, you had nothing whatsoever to do with the formulation of the conclusions disclosed in the letter dated July 3rd, 1969?

A Nothing.

* * * *

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Supreme Court, U. S.
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APPENDIX
Vol. II—Exhibits

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1888

UNITED STATES OF AMERICA,

Petitioner.

—v.—

STATE OF ALASKA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JUNE 17, 1974
CERTIORARI GRANTED DECEMBER 9, 1974

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1888

UNITED STATES OF AMERICA,

Petitioner,

—v.—

STATE OF ALASKA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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PART IV.

PRIOR CORRESPONDENCE RELATIVE TO BEHRING SEA, ALASKA, THE SEA OF OKHOTSK, AND THE RUSSIAN UKASE OF 1821.

No. 161.*

Mr. Poletica to Mr. Adams.

[Translation.]

WASHINGTON, *January* 30 [*February* 11], 1822.

The undersigned, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of all the Russias, in consequence of orders which have lately reached him, hastens herewith to transmit to Mr. Adams, Secretary of State in the Department of Foreign Affairs, a printed copy of the regulations adopted by the Russian-American Company, and sanctioned by His Imperial Majesty, relative to foreign commerce in the waters bordering the establishments of the said company on the northwest coast of America.

The undersigned conceives it to be, moreover, his duty to inform Mr. Adams that the Imperial Government, in adopting the regulation, supposes that a foreign ship, which shall have sailed from a European port after the 1st of March, 1822, or from one of the ports of the United States after the 1st of July of the same year, can not lawfully pretend ignorance of these new measures.

The undersigned, etc.,

PIERRE DE POLETICA.

[Inclosure 1.]

Edict of His Imperial Majesty, Autocrat of all the Russias.

The directing senate maketh known unto all men:

Whereas in an edict of His Imperial Majesty, issued to the directing senate on the 4th day of September, and signed by His Majesty's own hand, it is thus expressed:

"Observing, from reports submitted to us, that the trade of our subjects on the Aleutian Islands and on the northwest coast of America, appertaining unto Russia, is subject, because of secret and illicit traffic, to oppression and impediments; and finding that the principal cause of these difficulties is the want of rules establishing the boundaries for navigation along these coasts, and the order of naval communication, as well in these places as on the whole of the eastern coast of Siberia and the Kurile Islands, we have deemed it necessary to determine these communications by specific regulations, which are hereto attached.

* Nos. 161 to 173, inclusive, are here reprinted from "American State Papers, Foreign Relations."

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"In forwarding these regulations to the directing senate, we command that the same be published for universal information, and that the proper measures be taken to carry them into execution."

COUNT D. GURIEV,
Minister of Finances.

It is therefore decreed by the directing senate that His Imperial Majesty's edict be published for the information of all men, and that the same be obeyed by all whom it may concern.

[The original is signed by the directing senate.]

Printed at St. Petersburg. In the senate, September 7, 1821.

[On the original is written, in the handwriting of His Imperial Majesty, thus:]

Be it accordingly,

ALEXANDER.

KAMENNOY OSTHOVF, *September* 4, 1821.

[Inclosure II.]

Rules established for the limits of navigation and order of communication along the coast of the Eastern Siberia, the northwestern coast of America, and the Aleutian, Kurile, and other islands.

SEC. 1. The pursuits of commerce, whaling, and fishing, and of all other industry, on all islands, ports, and gulfs, including the whole of the northwest coast of America, beginning from Behring Strait to the fifty-first degree of northern latitude; also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring Strait to the south cape of the island of Urup, viz, to 45° 50′ northern latitude, are exclusively granted to Russian subjects.

SEC. 2. It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than a hundred Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo.

SEC. 3. An exception to this rule is to be made in favor of vessels carried thither by heavy gales, or real want of provisions, and unable to make any other shores but such as belong to Russia; in these cases they are obliged to produce convincing proofs of actual reason for such an exception. Ships of friendly governments, merely on discoveries, are likewise exempt from the foregoing rule (section 2). In this case, however, they must previously be provided with passports from the Russian minister of the navy.

No. 165.

Mr. Adams to Mr. Poletica.

DEPARTMENT OF STATE,
Washington, February 25, 1822.

SIR: I have the honor of receiving your note of the 11th instant, inclosing a printed copy of the regulations adopted by the Russian American Company, and sanctioned by His Imperial Majesty, relating to the commerce of foreigners in the waters bordering on the establishments of that company upon the northwest coast of America.

I am directed by the President of the United States to inform you that he has seen with surprise, in this edict, the assertion of a territorial claim on the part of Russia, extending to the fifty first degree of north latitude on this continent, and a regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within 100 Italian miles of the shores to which that claim is made to apply. The relations of

the United States with His Imperial Majesty have always been of the most friendly character; and it is the earnest desire of this Government to preserve them in that state. It was expected, before any act which should define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

This ordinance affects so deeply the rights of the United States and of their citizens that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and regulations contained in it.

I avail, etc.,

JOHN QUINCY ADAMS.

No. 166.

Mr. Poletica to Mr. Adams.

WASHINGTON, *February* 28, 1822.

Mr. Poletica replied on the 28th of the same month, and after giving a summary of historical incidents which seemed to him to establish the title of Russia to the territories in question by first discovery, said:

"I shall be more succinct, sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the northwest coast of America belonging to Russia within the distance of at least 100 Italian miles. This measure, however severe it may at first appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resist and revolt against the authorities there established.

"The American Government doubtless recollects that the irregular conduct of these adventurers, the majority of whom was composed of American citizens, has been the object of the most pressing remonstrances on the part of Russia to the Federal Government from the time that diplomatic missions were organized between the countries. These remonstrances, repeated at different times, remain constantly without effect, and the inconveniences to which they ought to bring a remedy continue to increase. • • •

"I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the northwest coast of America, from Behring's Strait to the fifty-first degree of north latitude, and on the opposite side of Asia and the islands adjacent, from the same strait to the forty-fifth degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to *shut seas* (mers fermées), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities."

No. 167.

Mr. Adams to Mr. Poletica.

DEPARTMENT OF STATE,
Washington, March 30, 1822.

SIR: I have had the honor of receiving your letter of the 28th ultimo, which has been submitted to the consideration of the President of the United States.

From the deduction which it contains of the grounds upon which articles of regulation of the Russian-American Company have now, for the first time, extended the claim of Russia on the northwest coast of America to the fifty-first degree of north latitude, its only foundation appears to be the existence of the small settlement of Novo Archangelsk, situated, not on the American continent, but upon a small island in latitude 57°; and the principle upon which you state that this claim is now advanced is, that the fifty-first degree is equidistant from the settlement of Novo Archangelsk and the establishment of the United States at the mouth of the Columbia River. But, from the same statement, it appears that, in the year 1799, the limits prescribed by the Emperor Paul to the Russian-American Company were fixed at the fifty-fifth degree of latitude, and that, in assuming now the latitude 57°, a new pretension is asserted, to which no settlement made since the year 1799 has given the color of a sanction.

This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within 100 Italian miles of the coasts. From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than 90° of longitude, or 4,000 miles.

As little can the United States accede to the justice of the reason assigned for the prohibition above mentioned. The right of the citizens of the United States to hold commerce with the aboriginal natives of the northwest coast of America, without the territorial jurisdiction of other nations, even in arms and munitions of war, is as clear and indisputable as that of navigating the seas. That right has never been exercised in a spirit unfriendly to Russia; and although general complaints have occasionally been made on the subject of this commerce by some of your predecessors, no specific ground of charge has ever been alleged by them of any transaction in it which the United States were, by the ordinary laws and usages of nations, bound either to restrain or to punish. Had any such charge been made, it would have received the most pointed attention of this Government, with the sincerest and firmest disposition to perform every act and obligation of justice to yours which could have been required. I am commanded by the President of the United States to assure you that this disposition will continue to be entertained, together with the earnest desire that the harmonious relations between the two countries may be preserved.

Relying upon the assurance in your note of similar dispositions reciprocally entertained by His Imperial Majesty towards the United States, the President is persuaded that the citizens of this Union will remain unmolested in the prosecution of their lawful commerce, and that no effect will be given to an interdiction manifestly incompatible with their rights.

I am, etc.,

JOHN QUINCY ADAMS.

No. 168.

Mr. Poletica to Mr. Adams.

WASHINGTON, *April* 2, 1822.

Mr. Poletica replied on the 2d of April following, and after again endeavoring to prove the title of Russia to the northwest coast of America from Behring Straits to the fifty-first degree of north latitude, said:

"In the same manner the great extent of the Pacific Ocean at the fifty-first degree of latitude can not invalidate the right which Russia may have of considering that part of the ocean as close. But as the Imperial Government has not thought fit to take advantage of that right, all further discussion on this subject would be idle.

"As to the right claimed for the citizens of the United States of trading with the natives of the country of the northwest coast of America, without the limits of the jurisdiction belonging to Russia, the Imperial Government will not certainly think of limiting it, and still less of attacking it there. But I can not dissemble, sir, that this same trade beyond the fifty-first degree will meet with difficulties and inconveniences, for which the American owners will only have to accuse their own imprudence after the publicity which has been given to the measures taken by the Imperial Government for maintaining the rights of the Russian-Amerian Company in their absolute integrity.

"I shall not finish this letter without repeating to you, sir, the very positive assurance which I have already had the honor once of expressing to you that in every case where the American Government shall judge it necessary to make explanations to that of the Emperor, the President of the United States may rest assured that these explanations will always be attended to by the Emperor, my august sovereign, with the most friendly, and consequently the most conciliatory, dispositions."

No. 169.

Baron Tuyll to Mr. Adams.

[Translation.]

WASHINGTON, *April* 12 (24), 1823.

The undersigned, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of all the Russias near the United States of America, has had the honor to express to Mr. Adams, Secretary of State, the desire of the Emperor, his master, who is ever animated by

a sincere friendship towards the United States, to see the discussions that have arisen between the cabinets of St. Petersburg and Washington, upon some provisions contained in the ukase of the 11th (16th) of September, 1821, relative to the Russian possessions on the northwest coast of America, terminated by means of friendly negotiation.

These views of His Imperial Majesty coincide with the wish expressed some time since on the part of the United States in regard to a settlement of limits on the said coast.

The ministry of the Emperor having induced the British ministry to furnish Sir Charles Bagot, ambassador of His Majesty the King of England near His Imperial Majesty, with full powers necessary for the negotiation about to be set on foot for reconciling the difficulties existing between the two courts on the subject of the northwest coast, the English Government is desirous of acceding to that invitation.

The undersigned has been directed to communicate to Mr. Adams, Secretary of State, in the name of his august master, and as an additional proof of the sentiments entertained by His Imperial Majesty towards the President of the United States and the American Government, the expression of his desire that Mr. Middleton be also furnished with the necessary powers to terminate with the Imperial cabinet, by an arrangement founded on the principle of mutual convenience, all the differences that have arisen between Russia and the United States in consequence of the law published September 4 (16), 1821.

The undersigned thinks he may hope that the Cabinet of Washington will, with pleasure, accede to a proposition tending to facilitate the completion of an arrangement based upon sentiments of mutual good will and of a nature to secure the interests of both countries.

He profits, etc.,

TUYLL.

No. 170.

Mr. Adams to Baron Tuyll.

DEPARTMENT OF STATE,
Washington, May 7, 1823.

The undersigned, Secretary of State of the United States, has submitted to the consideration of the President the note which he had the honor of receiving from the Baron de Tuyll, envoy extraordinary and minister plenipotentiary from His Imperial Majesty the Emperor of all the Russias, dated the 12th (24th) of the last month.

The undersigned has been directed, in answer to that note, to assure the Baron de Tuyll of the warm satisfaction with which the President receives and appreciates the friendly dispositions of His Imperial Majesty toward the United States; dispositions which it has been, and is, the earnest desire of the American Government to meet with corresponding returns, and which have been long cemented by the invariable friendship and cordiality which have subsisted between the United States and His Imperial Majesty.

Penetrated with these sentiments, and anxiously seeking to promote their perpetuation, the President readily accedes to the proposal that the minister of the United States at the court of His Imperial Majesty should be furnished with powers for negotiating, upon principles adapted to those sentiments, the adjustment of the interests and rights which

have been brought into collision upon the northwest coast of America, and which have heretofore formed a subject of correspondence between the two Governments, as well at Washington as at St. Petersburg.

The undersigned is further commanded to add that, in pursuing, for the adjustment of the interests in question, this course, equally congenial to the friendly feelings of this nation towards Russia and to their reliance upon the justice and magnanimity of his Imperial Majesty, the President of the United States confides that the arrangements of the cabinet of St. Petersburg will have suspended the possibility of any consequences resulting from the ukase to which the Baron de Tuyll's note refers which could affect the just rights and the lawful commerce of the United States during the amicable discussion of the subject between the Governments respectively interested in it.

The undersigned, etc.,

JOHN QUINCY ADAMS.

No. 171.

Mr. Adams to Mr. Middleton.

No. 16.] DEPARTMENT OF STATE,
Washington, July 22, 1823.

SIR: I have the honor of inclosing herewith copies of a note from Baron de Tuyll, the Russian minister, recently arrived, proposing, on the part of His Majesty the Emperor of Russia, that a power should be transmitted to you to enter upon a negotiation with the ministers of his Government concerning the differences which have arisen from the Imperial ukase of 4th (16th) September, 1821, relative to the northwest coast of America, and of the answer from this Department acceding to this proposal. A full power is accordingly inclosed, and you will consider this letter as communicating to you the President's instructions for the conduct of the negotiation.

From the tenor of the ukase, the pretentions of the Imperial Government extend to an exclusive territorial jurisdiction from the forty-fifth degree of north latitude, on the Asiatic coast, to the latitude of fifty-one north on the western coast of the American continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast.

The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the fifty-fifth degree of latitude, and have no existence on the continent of America.

The correspondence between Mr. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the Imperial ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the ukase itself had already done in England. I inclose herewith the North American Review for October, 1822, No. 37, which contains an

article (p. 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the fifty second number of the Quarterly Review, the article upon Lieutenant Kotzebue's voyages. From the article in the North American Review it will be seen that the rights of discovery, of occupancy, and of uncontested possession, alleged by Mr. Poletica, are all without foundation in fact. * * *

The right of the United States from the forty-second to the forty-ninth parallel of latitude on the Pacific Ocean we consider as unquestionable, being founded, first, on the acquisition, by the treaty of February 22, 1819, of all the rights of Spain; second, by the discovery of the Columbia River, first from sea, at its mouth, and then by land, by Lewis and Clarke; and third, by the settlement at its mouth in 1811. This territory is to the United States of an importance which no possession in North America can be to any European nation, not only as it is but the continuity of their possessions from the Atlantic to the Pacific Ocean, but as it offers their inhabitants the means of establishing hereafter water communications from the one to the other.

It is not conceivable that any possession upon the continent of North America should be of use or importance to Russia for any other purpose than that of traffic with the natives. This was, in fact, the inducement to the formation of the Russian American Company and to the charter granted them by the Emperor Paul. It was the inducement to the ukase of the Emperor Alexander. By offering free and equal access for a term of years to navigation and intercourse with the natives to Russia, within the limits to which our claims are indisputable, we concede much more than we obtain. It is not to be doubted that, long before the expiration of that time, our settlement at the mouth of the Columbia River will become so considerable as to offer means of useful commercial intercourse with the Russian settlements on the islands of the northwest coast.

With regard to the territorial claim, separate from the right of traffic with the natives and from any system of colonial exclusions, we are willing to agree to the boundary line within which the Emperor Paul had granted exclusive privileges to the Russian-American Company, that is to say, latitude 55°.

If the Russian Government apprehend serious inconvenience from the illicit traffic of foreigners with their settlements on the northwest coast, it may be effectually guarded against by stipulations similar to those, a draft of which is herewith subjoined, and to which you are authorized, on the part of the United States, to agree. * * *

I am, etc.,

JOHN QUINCY ADAMS.

[Inclosure.]

Draft of treaty between the United States and Russia.

ART. I. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the contracting parties, it is agreed that their respective citizens and subjects shall not be disturbed or molested, either in navigating or in carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country; subject, nevertheless, to the restrictions and provisions specified in the two following articles.

ART. II. To the end that the navigation and fishery of the citizens and subjects of the contracting parties, respectively, in the Pacific Ocean or in the South Seas, may

as the benefits are equal and mutual, and the object of the convention, to avoid converting the exercise of a common right into a dispute about exclusive privilege, is secured by it.

I am, etc.,

JOHN FORSYTH.

No. 188.

Mr. Dallas to Mr. Forsyth.

No. 15.] LEGATION OF THE UNITED STATES OF AMERICA,
St. Petersburg, March 19, 1838.

SIR: The departure of a courier from the British legation to-morrow enables me to forward to you copies of two notes which have recently passed between Count Nesselrode and myself. They originate in the claim advanced on behalf of the owners of the *Loriot*, agreeably to your instructions of the 4th of May, 1837. Their interest, however, is far more extensive, the demand for private indemnity being merged in a question of national right, and the interpretation of the treaty negotiated in 1824 by my predecessor, Mr. Middleton.

* * * * * * *

I have, etc.,

G. M. DALLAS.

[Inclosure 1 in Mr. Dallas's No. 15.—Translation.]

Count Nesselrode to Mr. Dallas.

ST. PETERSBURG, *February* 23, 1838.

Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States of America, by his note of the 15th (27th) of August last, has thought proper to interpose in behalf of the claims preferred by Richard Blinn, a citizen of the United States, and master of the merchant brig *Loriot*. It appears from the above-mentioned note that in 1835 this vessel, having sailed for the northwest coast of America, arrived at Forrester's Island in latitude of 54° 55′ north, with the intention of employing the natives in hunting for sea-otters, and that a few days after his arrival he was ordered off by a brig of the Russian-American Company, without having been able to pursue his project. Mr. Blinn, in virtue of the stipulations of the convention of the 5th (17th) of April, 1824, and especially of the first article of that convention, now prefers complaints against the conduct of the Russian brig towards him, and asks indemnification for the losses sustained in consequence by the proprietors of the *Loriot*.

A claim of this nature, presented, too, by the representative of a power with which Russia is anxious to cultivate the most friendly relations, demanded the most serious attention on the part of the Imperial ministry. The Russian-American Company was accordingly asked, without delay, for minute information respecting all the circumstances connected with the above-mentioned facts, in order that it might be examined with an entire knowledge of the affair. This information has not yet reached the Imperial ministry, as the Russian-American Company has not to this moment received any special report concerning the ordering off of the *Loriot*. It appears, however, from the circumstances as stated in the very note of Mr. Dallas, as well as from a deposition made by one of the officers recently returned from those countries, that in notifying Mr. Richard Blinn to quit the shores where he was, the commander of the Russian brig did nothing more than conform with the instructions given to him at the expiration of the fourth article of the convention.

By examining the stipulations of that convention, with the spirit of equity which marks the character of Mr. Dallas, he will be convinced that the Imperial Government can not acknowledge the justice of the complaints of Mr. Blinn.

It is true, indeed, the first article of the convention of 1824, to which the proprietors of the *Loriot* appeal, secures to the citizens of the United States entire liberty of navigation in the Pacific Ocean, as well as the right of landing without disturbance

upon all points on the northwest coast of America, not already occupied, and to trade with the natives. But this liberty of navigation is subject to certain conditions and restrictions, and one of these restrictions is that stipulated by the fourth article, which has specially limited to the period of ten years the right on the part of the citizens of the United States to frequent, without disturbance, the interior seas, the gulfs, harbors, and creeks north of the latitude of 54° 40′. Now this period had expired more than two years before the *Loriot* anchored in the harbor of Tuckessan. In 1835 the Emperor's minister in the United States had received orders to call the attention of the cabinet at Washington expressly to the circumstance of the expiration of this period; and in consequence of the official note addressed on this subject by Baron de Krudener to the Secretary of State, the Government of the United States caused to be published, in the Washington newspaper, a statement that, as the period of ten years had expired on the 4th of April, 1834, "the governor of the Russian colonies had formally notified the commanders of American vessels in that quarter that they could no longer claim, under the convention, the right of landing without distinction, at all the harbors belonging to Russia on this coast."

If, then, notwithstanding so formal a warning which the Government of the United States had itself aided in conveying to the knowledge of the citizens of the Union, the owners of the *Loriot* ventured upon an expedition to coasts where they had for two years been interdicted from landing it appears that they should attribute only to themselves the ill success of this enterprise, and that the Imperial Government can not admit their claims, nor acknowledge their title to indemnification. In communicating these observations to Mr. Dallas, the undersigned flatters himself with the belief that he will admit the justice of them, and cause them to be viewed in the same light by his Government.

In this hope he prays the envoy to accept, etc.,

NESSELRODE.

[Inclosure 2 in Mr. Dallas's No. 15.]

Mr. Dallas to Count Nesselrode.

ST. PETERSBURG, *March* 5 (17), 1838.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, had the honor to receive the answer of his excellency Count Nesselrode, vice-chancellor of the Empire, dated the 23d February, 1838, to the communication which the undersigned, conformably to the special charge of his Government, addressed to his excellency on the 15th (27th) of August, 1837, in relation to the interference of certain of his Imperial Majesty's armed forces with the merchant brig *Loriot*, owned and commanded by citizens of the United States, and prosecuting a trading voyage to the northwest coast of America.

The remoteness of the regions where the incidents occurred which constitute the foundation of the reclamation on behalf of the parties injured, and the known difficulty of obtaining circumstantial details of any event in that quarter, connected with the assurance of his excellency that the Imperial ministry had given to the subject its serious attention, must have engaged the undersigned to protracted silence, under the conviction that everything which the justice of the case required would ultimately be attained. The note, however, of his excellency, if accurately understood, dispenses with the necessity of additional information, and, adopting the statement of facts derived by the American Government from its citizens, would seem to remove all motive for further delay. An early notice, therefore, of the grounds upon which a recognition of the claim has been declined is impelled alike by a profound respect for the source whence they emanated, and by a sense of the peculiar importance with which they bear upon the relations and interests of the two countries.

The light in which the President of the United States regarded the treatment of Captain Blinn precluded the possibility of his supposing it warranted by the public authorities of Russia. He will hear, with painful surprise, that the subordinate by whom that treatment was inflicted did but obey the instructions with which he had been furnished in consequence of the expiration of the fourth article of the convention of 1821.

It will be recollected that more than two and a half years ago the American Secretary of State, Mr. Forsyth, in a letter of the 21st of July, 1835, addressed to His Imperial Majesty's minister then at Washington, the Baron de Krudener, expressed a wish to receive, as early as practicable, precise information of the measures His Imperial Majesty's Government had adopted or proposed to adopt in relation to the admission of American vessels into the harbors, bays, and rivers of the Russian settlements on the northwest coast of the continent; that this request was reiterated by Mr. Wilkins, the predecessor of the undersigned, in a communication of the 1st of

November, 1835; and that his excellency Count Nesselrode, in answer thereto, referring to the spring of 1836 as the earliest period at which an exact knowledge could be obtained of the measures which the local authorities had adopted, or which it would be necessary to adopt, left no room to doubt that they would then, or as soon as digested, be made known to the American Government. This information, so desirable as a basis for any corresponding measures to which the United States would have been urged by their uniform dispositions of amity towards Russia, as well as by a provident attention to the regularity and security of their own commerce, has never been imparted. Had the purport of the instruction, under which the *Loriot* was violently seized and driven from her voyage, been communicated, it would not have been allowed to work injury and loss to unoffending persons, without at least being first made the object of candid remonstrance, or of precautionary notice. And the President of the United States, unapprized of these regulations, or of the particular points of the northwest coast on which Russian establishments were newly formed, could not but view the abrupt proceeding to which Captain Blinn was subjected as an act, under any aspect, of the most unfriendly character. How far this sentiment will be changed or qualified by unexpectedly finding the slight on the American flag and the armed opposition to American trade to have been ordered, and to be now sanctioned, by the Government of His Imperial Majesty, upon the principles stated, the undersigned can not venture to foresee.

Nor is the "informal notice" (lying before the undersigned) published, at the repeated request of Baron de Krudener, in the Washington Globe on the 22d of August, 1835, to which his excellency has referred, susceptible, in the estimation of the undersigned, of a construction which can ascribe to the American Government, or any of its citizens, the knowledge that a voyage like the one contemplated by Captain Blinn was inconsistent with any colonial interdict or general pretension of the Imperial authorities. Far from it. That publication, while characteristic of the frank and confiding readiness with which the American Executive proceeded to execute a wish expressed by a power whose intercourse and relations inspire no distrust, compels, as is conceived, with undesigned deference, the opposite construction, and imports a recognition of the entire lawfulness of such a voyage. In this spirit, and in this only, was it originally framed, and has ever since, without a question, been understood by the Government and people of the United States. True, it adverts to a notice issued by the governor of the Russian colonies after the expiration of the fourth article of the convention, to the effect that the masters of American vessels could no longer claim the right they enjoyed under that fourth article of landing at all the landing places, without distinction, belonging to Russia on the northwest coast; and it further proceeds to observe to all interested in the trade that, under the second article of the same convention, it is necessary for all American vessels resorting to any point where there is a Russian establishment to obtain the permission of the governor or commander. To the scope of phraseology of this "informal notice" it is believed Baron de Krudener never, orally or in writing, took the slightest exception. It will surely be perceived by his excellency Count Nesselrode to contain no inhibition of trading voyages generally to the northwest coast of America, but, on the contrary, to confine its admonition expressly and precisely to "landing places belonging to Russia," and to "any point on the coast where there is a Russian establishment." Such landing places and such points were alone supposed to be embraced in the notice of Governor Wrangel, and were alone designated in the publication. American voyages to them were no longer as unembarrassed as during the operation of the fourth article of the convention, but to all other points of that vast and wild territory the freedom of American navigation and trade remained unimpaired. It formed no part of the purpose of Captain Blinn to visit, with or without permission, any landing place or point distinguished by Russian occupancy or establishment; and it is therefore submitted that, even supposing him to have read the paragraph adduced, he could at least deduce from it nothing adverse to his voyage.

The decision of the Imperial ministry is stated by his excellency the vice-chancellor to result from the very circumstances set forth in the note of the undersigned, as well as from an affidavit of an officer recently returned from the Russian colonies, and to be founded upon the convention of 1824. As the contents of the affidavit are not mentioned, they are presumed not to affect materially the narrative of the note, and certainly not to introduce any substantive assertion or denial adequate to give the case a totally new character, and to exact, by its own force merely, a judgment which could not be reached without it. The remarks, therefore, which the undersigned proposes to subjoin are necessarily restricted to the admitted allegations on behalf of Captain Blinn in connection with the stipulations of the treaty.

If, in pursuing this course, any injustice be done to the reasoning or views of the Imperial ministry, he will, on the slightest intimation, hasten to rectify it with the frankness which he esteems indispensable to the faithful discharge of his representative duty.

Avoiding a repetition of details heretofore enumerated, as well as their aggravat-

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ing features, the leading facts of reclamation are, that the brig *Loriot*, owned and commanded by American citizens, sailed from the Sandwich Islands on the 23d of August, 1836, bound to the northwest coast, to procure provisions and Indians for hunting sea-otter; that, having made Forrester's Island, she anchored in the harbor of Tuckessan, in latitude 54° 55' north; that no Russian establishment existed in that harbor; that four days afterwards, an armed brig of His Imperial Majesty's navy went into a neighboring harbor, called Tateskey, in latitude 54° 45' north; that no Russian establishment existed in this latter harbor; that she was boarded by officers from the armed brig, by whom her captain was first ordered to leave the dominions of Russia, and subsequently compelled to get under way and sail for the harbor of Tateskey; that when off the harbor of Tateskey she was, in threatening weather, refused permission to enter, and peremptorily again commanded to quit the waters of His Imperial Majesty; and, finally, that, owing exclusively to this interference of armed force, her voyage was abandoned, and she returned to the Sandwich Islands on the 1st of November. It is this plain and brief story, which the undersigned, by instruction of his Government, has termed inconsistent with the rights of American citizens, immemorially exercised and secured by the laws of nations, as well as by the stipulations of the first article of the convention of 1824, and entitling the parties injured to such indemnification as might on an investigation be found justly their due.

The right of the citizens of the United States to navigate the Pacific Ocean, and their right to trade with the aboriginal natives of the northwest coast of America, without the jurisdiction of other nations, are rights which constituted a part of their independence as soon as they declared it. They are rights founded in the law of nations, enjoyed in common with all other independent sovereignties, and incapable of being abridged or extinguished, except with their own consent. It is unknown to the undersigned that they have voluntarily conceded these rights, or either of them, at any time, through the agency of their Government, by treaty or other form of obligation, in favor of any community. Yet he deduces from the communication of his excellency, after having given it the careful consideration to which every act from such a source lays claim, as the only ground upon which the reclamation on behalf of Captain Hill is resisted, the proposition that the United States, by the convention of 1824, yielded to His Imperial Majesty the right to hold commerce, on the expiration of ten years, with the aboriginal natives on the northwest coast beyond the degree of 54° 40' north latitude. This proposition, if established, is unquestionably fatal to the pretensions of the master and owners of the *Loriot*. It bears, however, an aspect so detrimental to the interests of his countrymen, and to their attributes as an independent power, is so inconsistent with the past policy and principles of the American cabinets, and is withal of such minor importance to the prosperity and greatness of Russia, that the undersigned trusts its want of solid foundation will, on further reflection, be apparent and confessed.

The avowed objects of the convention between the United States and His Imperial Majesty, were "to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord." The means of attaining these invaluable ends were embodied in its articles. There is first a mutual and permanent agreement, declaratory of their respective rights, without disturbance or restraint, to navigate and fish in any part of the Pacific Ocean, and to resort to its coasts upon points which may not already have been occupied, in order to trade with the natives. These rights pre-existed in each, and were not fresh liberties resulting from the stipulation. To navigate, to fish, and to coast, as described, were rights of equal certainty, springing from the same source, and attached to the same quality of nationality. Their exercise, however, was subjected to certain restrictions and conditions, to the effect that the citizens and subjects of the contracting sovereignties should not resort to points where establishments existed without obtaining permission; that no future establishments should be formed by one party north, nor by the other party south, of 54° 40' north latitude; but that, nevertheless, both might for a term of ten years, without regard to whether an establishment existed or not, without obtaining permission, without any hindrance whatever, frequent the interior seas, gulfs, harbors, and creeks, to fish and trade with the natives. This short analysis leaves, on the question at issue, no room for construction.

The view taken by his excellency Count Nesselrode rests upon the provision last referred to, contained in the fourth article of the convention. Of this it is essential to fix the true character. Does its limitation of ten years apply to the broad national right of resorting to unoccupied points of the coast? If it do not, the position taken is untenable. That it does not, would seem to be a conclusion of the gravest, as of the lightest scrutiny.

The renunciation of a prerogative so high and important, if designed would not have been left to mere inference from a disjointed paragraph, but would have been distinctly expressed in immediate connection with its first statement. No motive

can possibly be assigned for permitting an intended abandonment of such a right, formally declared in the first article, to lurk unseen in the varied language of the fourth article.

The power of resorting to unoccupied points of the coast existed in perpetuity by the laws of nations, and is so enunciated in the first article. To declare it afterwards to exist for ten years would be to insert a clause idle and without effect, providing for the temporary enjoyment of what had been previously pronounced permanent. But the interpretation of every instrument must be such as will, if possible, give substance and utility to each of its parts. Applied to points of the coast already occupied, the fourth article takes effect as a temporary exception to the perpetual prohibition of the second article; and the only consequence of the expiration of the term to which it is limited, is the revival and continued operation of that prohibition.

In employing, in the fourth article, the descriptive words "interior seas, gulfs, harbors, and creeks," there is a departure from the comprehensive phraseology of the first article, which is only to be explained by the fact that another idea was to be expressed. Nor is it difficult to understand what was really meant. The bonds of amity and perfect concord, which it was so desirable to cement and invariably maintain, would have been endangered, in peculiar localities, as to which doubts might naturally arise whether they were embraced in the first or the second article. If, however, at their openings, or upon their commanding headlands, or on their shores, an occupied point or establishment existed, it was thought expedient to let them take character from that incident, without any nice measurement of its range or influence, at the expiration of ten years; and, accordingly, the fourth article, avoiding too sudden a check of the actual account of trade, put a limit of time upon the liberty to frequent such places.

The undersigned submits that in no sense can the fourth article be understood as implying an acknowledgment, on the part of the United States, of the right of Russia to the possession of the coast above the latitude of 54° 40' north. It must, of course, be taken in connection with the other articles, and they have, in fact, no reference whatever to the question of the right of possession of the unoccupied parts. To prevent future collisions it was agreed that no new establishment should be formed by the respective parties to the north or south of the parallel mentioned; but the question of the right of possession beyond the existing establishments, as it stood previous to, or at the time of, the convention, was left untouched.

By agreeing not to form new establishments north of latitude 54° 40' the United States made no acknowledgment of the right of Russia to the territory above that line. If such an admission had been made, Russia, by the same construction of the article referred to, must have equally acknowledged the right of the United States to the territory south of the parallel. But that Russia did not so understand the article is conclusively proved by her having entered into a similar agreement in her subsequent treaty of 1825, with Great Britain, and having in that instrument acknowledged the right of possession of the same territory by Great Britain.

The United States can only be considered inferentially as having acknowledged the right of Russia to acquire, above the designated meridian, by actual occupation, a just claim to unoccupied lands. Until that actual occupation be taken, the first article of the convention recognizes the American right to navigate, fish, and trade, as prior to its negotiation. Such is esteemed the true construction of the convention; the construction which both nations are interested in affixing, as the benefits are equal and mutual, and the great object is secured of removing the exercise of a common right from the danger of becoming a dispute about exclusive privileges.

At the hazard of proving tedious, the undersigned has thus endeavored to convey to his excellency Count Nesselrode the views suggested by his recent communication.

The Government of the United States is ardent and uniform in its anxiety to cherish with that of Russia the most friendly relations; in the reciprocation of this sentiment the fullest confidence is felt. The citizens and subjects of the two countries, meeting only with feelings of cordiality and for purposes of mutual advantage, are rapidly reaping the fruits of a wise and beneficent international policy. Every year enlarges the sphere of their commercial intercourse, discloses the identity of their interests, and strengthens their ties of amity. In the persuasion that the enlightened councils of His Imperial Majesty will join with the American authorities in every effort consistent with the honor and rights of their respective nations, to rescue this condition of things from all danger of interruption, the undersigned earnestly invites a reconsideration of the ground upon which the claim of the owners of the *Loriot* has been dismissed.

With a consoling hope as to the result, he begs, etc.,

G. M. DALLAS.

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No. 189.

Mr. Dallas to Mr. Forsyth.

No. 16.] LEGATION OF THE UNITED STATES OF AMERICA,
St. Petersburg, April 16, 1838.

SIR: On the 21st of last month I received the answer of Count Nesselrode to the proposal made to him in my communication of the 28th of December, 1837, for the renewal of the fourth article of the convention of 1824, and I accompanied my acknowledgment of its receipt with a request for information as to the measures adopted or proposed to be adopted by His Imperial Majesty, respecting the admission of American vessels into the Russian establishments on the northwest coast. Copies of these two documents are annexed to this dispatch. Every act of an official character is preceded by so much deliberation and delay that I may not hope to hear further on this subject for some weeks to come.

The refusal to renew the article was far from unexpected. Although there may be much truth in the statements upon which that refusal is explained, it was foreseen that the grasping policy of the fur company would, in itself, be quite adequate to this result. I am unable to say how far the representation as to the extremely limited character of the American trade under the article be correct, nor how far my countrymen may be implicated in the sale of spirituous liquors, powder, and fire-arms to the natives in violation of the fifth article of the convention; nor whether complaints on the latter subject have or have not been made by the Russian authorities to those of the United States, invoking in designated cases the penalties prescribed by act of Congress. On none of these points do the archives of this legation furnish sources of information.

Nor would it, indeed, seem expedient, under any circumstances, to criticise the alleged motives for declining a revival of the expired stipulation. No consequence could follow but disagreement in relation to details, when the main point is one exclusively of discretion, is obviously decided beyond the probability of change, and that decision is communicated in the most friendly terms.

By the expiration in April, 1834, of the ten years limited in the fourth article of the convention, and by the definitive refusal to renew it, the Imperial Government would seem to attain an important object in their northwestern colonial policy, while the United States forego, in fact, nothing but a series of vague claims calculated only to embroil and complicate the relations of the two countries. My predecessor, Mr. Middleton, by whom the convention was negotiated, conceived the article to be a mutual grant, temporary in its duration, extending to specific and particular privileges, which the traders of neither nation would enjoy as general rights. He regarded the liberty to carry on commerce, without any hindrance whatever, with the natives in the interior seas, gulfs, harbors, and creeks of the Russian settlements, as so much added to the range of our trade beyond its natural boundaries; and he anticipated that, before the lapse of the term proposed, the Russian settlers would perceive the importance of our unshackled intercourse, as a sure and economical means for obtaining supplies, and would ultimately prolong it indefinitely. With these views and impressions, during the pendency of the negotiation, he originated the fourth article, which formed no part either of the *projet* of a treaty sent to him by Mr.

Adams, then Secretary of State, or of the *projet* he submitted to Count Nesselrode at their first conference on the 9th of February, 1821.

The adoption of the article suspended for ten years the necessity of practically discriminating between such places on the northwest coast as were open to a common trade, in consequence of being savage and unoccupied, and those accessible only by permission from a local authority. In other words, there was no immediate call for agreeing and defining what should constitute an "establishment," an "occupancy," or a "settlement," so as to redeem a given spot, with its contiguous territory from a wild state and subject them to an exclusive jurisdiction. During the prescribed period in this particular everything was left as large as before, and here lies, in my opinion, the chief if not the only important incident of the refusal to renew the article. It will become necessary now to have some distinct understanding as to the nature and range of the act of colonizing, which shall permanently vest the dominion in either nation. Without this our commerce in that interesting quarter must be impeded and narrowed and probably soon entirely destroyed by the absurd pretensions of the Russian Fur Company.

The stipulated freedom to trade unmolested within the interior seas, bays, creeks, and harbors of the northwest coast, being regarded, under our construction of the treaty, as solely applicable to occupied places, and having ceased upon the expiration of the ten years, it becomes essential to the safe prosecution of American enterprise and traffic in these remote regions, that we should ascertain, if possible, which of the interior seas, bays, creeks, and harbors fall, by actual Russian settlement, under exclusive Russian dominion. Although the facts be extremely difficult to reach, and a powerful monopoly be interested and at work to misrepresent them, still something may be effected by furnishing to our citizens a rule by which to test the character and extent of any occupation whose existence is alleged as an impediment to an intended voyage. And if we can not spare one or two of our vessels of war to make a thorough examination of the coast, as well as to assert, in defiance of petty obstacles, the national right to trade freely upon unoccupied points, we must be content, however reluctantly, to take just such statements for information as it may please the Fur Company's officers and agents to give. Supposing, then, what I do not expect, that the Imperial Government will abandon the ground it has taken in the case of Captain Blinn, and admit that we still possess the liberty of holding commerce with the natives north of the line of delimitation, I shall be anxious to have your instructions as to the suggested expediency of calling frankly for an enumeration of the points on the coast at which Russian settlements are alleged to exist, and of inviting the adjustment of some definite rule by which the reality of a settlement, and the extent of its adjacent operation, may at any time be peaceably determined. If, however, the position taken in reference to Captain Blinn's claim be adhered to, these inferior inquiries can not be made; for that position, as will be remembered, excludes our commerce, except by Russian permission, from the whole coast beyond the degree 51° 40′ north.

I should perhaps feel warranted in pursuing measures for this purpose without delay. The request for information as to the regulations to be enforced in relation to American vessels, made in my last note to Count Nesselrode, may be esteemed a fair preliminary. But I am anxious to know, before proceeding further, whether the decided manner in which I have treated the claim to exclusive dominion, in the affair of the *Loriot*, be approved or not; and whether the right by the laws of nations

to trade with the natives on unoccupied parts of the coast be esteemed so certain and so important that it will be insisted on, even at the hazard of interrupting the amicable relations of the two countries. I wish to shape my progress so as to harmonize in every movement, as nearly as possible, with whichever alternative, inflexibility, or concession the President may esteem the highest and truest policy.

* * * * * * * *

I have, etc.,

G. M. DALLAS.

[Inclosure in Mr. Dallas's No. 16.—Translation.]

Count Nesselrode to Mr. Dallas.

ST. PETERSBURG, *March* 9, 1838.

The undersigned has had the honor to receive the note that Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States of America, was pleased to address him on the 16th (28th) of December, relative to the proposition previously brought forward by Mr. Wilkins, to renew the fourth article of the convention of April 5 (17), 1824, of which the effect had been limited to a term of ten years, and which had, consequently, expired in 1834.

The desire not to decide a question of this importance without a thorough knowledge of the subject, did not permit the Imperial Government to give an opinion in relation to it until detailed information has been collected, as well in regard to the wants of the Russian establishments in America as to the influence that the state of things secured by the fourth article had exercised there. In setting forth this consideration to Mr. Wilkins, the undersigned intimated, in his note of the 28th of November, 1835, that he would give timely notice to the legation of the United States of the determinations adopted on this subject by the Russian Government.

The information then expected has since reached the undersigned, and it appears that the execution of the temporary provisions contained in the fourth article had not been unattended with serious inconveniences, and that it has been really injurious to the prosperity of the Russian establishments on the northwest coast. The greater part of the foreign vessels which resort to this coast, in virtue of the said stipulations, have only made use of the right of trading with the natives in order to sell them spirituous liquors, fire arms, and gunpowder. According to the tenor of the fifth article, these articles were expressly excluded from the trade; but experience has proven that this exclusion, and also the legislative measures by which the Government of the United States sought to carry it into effect, were illusory; since, by the same article, the contracting parties had deprived themselves of all means of controlling the vessels which should visit these latitudes, so that entire cargoes of rum, of fire-arms, and ammunition have been carried without hindrance into the Russian possessions and sold to the natives, thus necessarily endangering the germs of order and civilization which the agents of the Russian-American Company have already succeeded in introducing among these tribes.

It is, moreover, to be observed that the articles comprised in this fraudulent trade were expressly those of which the sale there offered most advantages, because the Russian American Company having once for all excluded them from its own traffic with the natives, the latter could only procure them on board foreign vessels.

This state of things could not fail to occasion complaints and remonstrances, which, the Imperial Government being ever anxious for the preservation of its relations with the United States, would alone, from that time, be an adequate motive to induce it to desire that the stipulations of the fourth article should not be renewed. But another consideration, not less decisive, here presents itself: this is the obligation under which the Imperial Government is placed to protect the commerce and navigation of the Russian colonies, and to secure to them henceforth the peaceable enjoyment of the advantages which, by virtue of their privileges, they are destined to gather from the improvement (exploitation) of the fisheries as well as from the trade with the natives.

These considerations, taken together, render it impossible for the Imperial Government to accede to the proposition which has been made to it to renew the stipulations of the fourth article. The regret experienced by it on the occasion is, however, diminished by the conviction that the United States would not themselves derive any especial advantage from the longer continuance of these stipulations, since, according to a statement of the navigation in these places, even whilst the fourth article was yet in force, there were never more than four American vessels arrived in the course

of a whole year, and that even this number, hardly to be taken into account in the flourishing state of the mercantile marine of the Union, was diminishing in proportion as enterprises on the northwest coast offered fewer chances of success. It appears evident from this that the renewal of the fourth article could hardly contribute to extend, in a reciprocally useful manner, the commercial relations between Russia and the United States of America; or, by consequence, answer the constant solicitude of the Imperial Government to cement more and more, and in a mutual interest, the friendly connections which it is always happy to cultivate with the Government of the Union.

The undersigned has the honor, etc.,

NESSELRODE.

No. 190.

Mr. Dallas to Mr. Forsyth.

No. 17.] LEGATION OF THE UNITED STATES,
St. Petersburg, May 13, 1838.

SIR: On the 9th instant, the communication of which I annex a copy was received from Count Nesselrode, in reply to my request, under date of the 26th of March last, to be furnished with information as to the measures adopted, or proposed to be adopted, by this Government, respecting the admission of American vessels into the Russian establishments on the northwest coast.

It will be perceived that the substance of Count Nesselrode's note is distinct and definitive, and that the single and simple measure adopted in relation to our vessels, is their absolute exclusion from what are deemed the Russian possessions. The published order of Governor Wrangel, to which Baron Krudener, in 1835, called your attention, is confirmed unqualifiedly in principle and practice; and the Cabinet at Washington is invited to repeat the warning heretofore given by it to the citizens of the United States not to contravene that prohibitory notice, so that they may avoid exposing themselves to the consequences of misunderstanding or collision.

Although my request for information was expressly limited to Russian establishments, and Count Nesselrode's reply to it may not strictly be extended beyond that limit, I can not help thinking that the prefatory and peculiar reference he has made to the expiration of the fourth article of the convention is meant as a reiteration of the position assumed in the case of the *Loriot*, Captain Blinn, to wit, that since April, 1834, our right to frequent the interior seas, gulfs, harbors, and creeks, north of 54° 40′ north latitude, whether actually occupied or not, has ceased. The consistent brevity, indeed, with which the effect of the ten years' limitation is uniformly invoked, satisfies me that it is esteemed a "*point d'appui*," in relation to our rights and pretensions on the northwest coast, too conclusive to be omitted or argued. My letter, in answer to the first assumption of that position, dated the 17th of March, 1838, and forwarded to you with dispatch No. 15, has not been noticed.

* * * * * * * *

Very respectfully, etc.

G. M. DALLAS.

[Inclosure in Mr. Dallas's No. 17.—Translation.]

Count Nesselrode to Mr. Dallas.

ST. PETERSBURG, *April* 27, 1838.

Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States of America, has been pleased in his note of the 14th (26th) of March, to express a

desire to know what measures have been adopted in consequence of the expiration of the fourth article of the convention of 1824, respecting the admission of American vessels into the harbors, bays, and rivers of the Russian establishments on the northwest coast. This request is made on account of the intention on the part of the Cabinet at Washington to adopt similar regulations, and such as may tend to prevent any injury to the relations now so fortunately existing between the two countries.

The undersigned, hastening to reply to an overture, accompanied by an assurance so satisfactory for the Imperial Government, makes it his duty to observe to Mr. Dallas, that, as the fourth article of the convention of the 5th (17th) of April, 1821, has only granted for ten years to the vessels of the two powers, or those belonging to their citizens or subjects, respectively, the right of frequenting, reciprocally, the interior seas, gulfs, harbors, and creeks on the coast mentioned in the third article of the same convention, for the purpose of fishing and trading with the natives of the country; and as this term of ten years expired in the month of April, 1831, the authorities of the Russian establishments on the said coast are required to see that American vessels no longer frequent the interior seas, gulfs, harbors, and creeks, situated north of the latitude of 54° 40′ north, as Russian vessels are, in like manner, forbidden to visit places of the same sort south of that parallel; and to maintain this prohibition, it is the duty of the said authorities to adopt the necessary measures, with the view of keeping up relations of harmony between the two Governments.

The governor of the Russian colonies on the northwest coast, having made upon this subject a publication which has been submitted to the knowledge of the Government of the United States, and the Emperor's minister at Washington having immediately afterwards invited that Government to make known to the citizens of the United States the new order of things consequent upon the expiration of the fourth article, the undersigned flatters himself with the belief that the Cabinet at Washington, in executing its announced resolution to adopt on its part similar measures, will think proper likewise to repeat its warning to the citizens of the United States, not to contravene the prohibition in question, and thus to avoid exposing themselves to the consequences of a misunderstanding or collision, which the Imperial Government would be the first to deplore.

On its part, the Imperial Government will not cease to recommend to its authorities on the northwest coast the necessary precautions, so that, while maintaining the rights acquired by Russia at the expiration of the fourth article, they should not lose sight of the respect due to the bonds of amity which unite the two Governments, and which the Imperial cabinet will always desire to strengthen and render more close for the mutual interests of their respective citizens and subjects.

The undersigned seizes, etc.,—

NESSELRODE.

No. 191.

Treaty concerning the cession of the Russian Possessions in North America by His Majesty the Emperor of all the Russias to the United States of America.

[Concluded March 30, 1867. Ratified by the United States May 28, 1867. Exchanged June 20, 1867. Proclaimed by the United States June 20, 1867.]

The United States of America and His Majesty the Emperor of all the Russias, being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose, appointed as their plenipotentiaries: the President of the United States, William H. Seward, Secretary of State; and His Majesty the Emperor of all the Russias, the Privy Counsellor, Edward de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States.

And the said plenipotentiaries having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following articles:

ARTICLE I.

His Majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of

47 It will of course strike the Russian Plenipotentiaries that, by the adoption of the American Article respecting navigation, &c., the provision for an exclusive fishery of 2 leagues from the coasts of our respective possessions falls to the ground.

But the omission is, in truth, immaterial.

The law of nations assigns the exclusive sovereignty of 1 league to each Power on its own coasts, without any specific stipulation, and though Sir Charles Bagot was authorized to sign the Convention with the specific stipulation of 2 leagues, in ignorance of what had been decided in the American Convention at the time, yet, after that Convention has been some months before the world, and after the opportunity of consideration has been forced upon us by the act of Russia herself, we cannot now consent, in negotiating *de novo*, to a stipulation which, while it is absolutely unimportant to any practical good, would appear to establish a contrast between the United States and us to our disadvantage.

THE TREATY (GREAT BRITAIN AND RUSSIA), FEBRUARY 28, 1825.

These negotiations resulted in a Convention with Great Britain, signed on the 28th of February, 1825, hereinafter referred to.

PROTEST OF UNITED STATES.

50th Cong., 2nd Sess., Sen. Ex. Doc. No. 106, p. 201.

On the 30th January (11th February), 1822, M. Pierre de Poletica, the Envoy Extraordinary and Minister Plenipotentiary of the Russian Emperor, transmitted the Ukase to Mr. Adams, Secretary of State for the United States.

Ibid., p. 205.

On the 25th February, 1822, Mr. Adams wrote to M. Poletica:

DEPARTMENT OF STATE,
Washington, February 25, 1822.

SIR, I have the honour of receiving your note of the 11th instant, inclosing a printed copy of the Regulations adopted by the Russian-American Company, and sanctioned by His Imperial Majesty, relating to the commerce of foreigners in the waters bordering on the establishments of that Company upon the north-west coast of America.

I am directed by the President of the United States to inform you that he has seen with surprise, in this Edict, the assertion of a territorial claim on the part of Russia, extending to the 51st degree of north latitude on this continent, and a Regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within 100 Italian miles of the shores to which that claim is made to apply. The relations of the United States with His Imperial Majesty have always been of the most friendly character; and it is the earnest desire of this Government to preserve them in that state. It was expected, before any Act
48 which should define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by Treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

This Ordinance affects so deeply the rights of the United States and of their citizens, that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and Regulations contained in it.

I avail, &c.

(Signed) JOHN QUINCY ADAMS.

It will be observed that both the Ukase and the protest apply to the waters from Behring Strait southward as far as the 51st degree of latitude on the coast of America.

RUSSIAN DEFENCE OF UKASE.

On the 28th of the same month the Russian Representative replied at length, defending the territorial claim on grounds of discovery, first occupation, and undisturbed possession, and explaining the motive which determined the Imperial Government in framing the Ukase.

He wrote:

M. de Poletica to Mr. J. Q. Adams, February 28, 1823. American State Papers, Foreign Relations, vol. iv, pp. 861-862. See Appendix, vol. ii, Part II No. 1.

I shall be more succinct, sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the north-west coast of America belonging to Russia within the distance of at least 100 Italian miles. This measure, however severe it may at first appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian-American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resist and revolt against the authorities there established.

The American Government doubtless recollects that the irregular conduct of these adventurers, the majority of whom was composed of American citizens, has been the object of the most pressing remonstrances on the part of Russia to the Federal Government from the time that Diplomatic Missions were organized between the countries. These remonstrances, repeated at different times, remain constantly without effect, and the inconveniences to which they ought to bring a remedy continue to increase. . . .

UKASE BASED ON DOCTRINE OF MARE CLAUSUM.

I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the north-west coast of America, from Behring Strait to the 51st degree of north latitude, and on the opposite side of Asia and the islands adjacent, from the same strait to the 45th degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to *shut seas* ("mers fermées"), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities.

49

To this Mr. Adams replied (30th March, 1822). He said:

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 207. See Appendix, vol. ii, Part II, No. 2.

This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within 100 Italian miles of the coasts. From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than 90° of longitude, or 4,000 miles.

The Russian Representative replied to this note on the 2nd April following, and in the course of his letter he said:

M. de Poletica to Mr. J. Q. Adams, April 2, 1822. 50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 208.

In the same manner the great extent of the Pacific Ocean at the 51st degree of latitude can not invalidate the right which Russia may have of considering that part of the ocean as close. But as the Imperial Government has not thought fit to take advantage of that right, all further discussion on this subject would be idle.

As to the right claimed for the citizens of the United States of trading with the natives of the country on the north-west coast of America, without the limits of the jurisdiction belonging to Russia, the Imperial Government will not certainly think of limiting it, and still less of attacking it there. But I cannot dissemble, sir, that this same trade beyond the 51st degree will meet with difficulties and inconveniences, for which the American owners will only have to accuse their own imprudence after the publicity which has been given to the measures taken by the Imperial Government for maintaining the rights of the Russian-American Company in their absolute integrity.

I shall not finish this letter, without repeating to you, sir, the very positive assurance which I have already had the honour once of expressing to you that in every case where the American Government shall judge it necessary to make explanations to that of the Emperor,
50 the President of the United States may rest assured that these explanations will always be attended to by the Emperor, my august Sovereign, with the most friendly and consequently the most conciliatory, dispositions.

On the 22nd July, 1823, Mr. Adams wrote to Mr. Middleton, the United States Minister at St. Petersburg, as follows:

52th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 210. See Appendix, vol. ii, Part II, No. 3.

From the tenour of the Ukase, the pretentions of the Imperial Government extend to an exclusive territorial jurisdiction from the 45th degree of north latitude, on the Asiatic coast, to the latitude of 51 north on the western coast of the American Continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast.

The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the Peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the 55th degree of latitude, and have no existence on the Continent of America.

The correspondence between M. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the Imperial Ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the Ukase itself had already done in England. I inclose herewith the North American Review for October, 1822, No. 37, which contains an article (p. 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the 52nd number of the Quarterly Review, the article upon Lieutenant Kotzebue's voyages. From the article in the North American Review it will be seen that the rights of discovery, of occupancy, and of uncontested possession, alleged by M. Poletica, are all without foundation in fact.

. . . .

Mr. Middleton, writing to the Secretary of State of the United States, on the 1st December, 1823, inclosed a confidential memorial which thus dealt with the claim (which is properly regarded by him as an attempt to extend territorial jurisdiction upon the theory of a shut sea and having no other basis):

American State Papers, Foreign Relations, vol. v, p. 452. See Appendix, vol. ii, Part II, No. 5.

51 The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled. It must thus be imagined that this prohibition, bearing the pains of confiscation, applies to a long line of coasts, with the intermediate islands, situated in vast seas, where the navigation is subject to innumerable and unknown difficulties, and where the chief employment, which is the whale fishery, cannot be compatible with a regulated and well-determined course.

The right cannot be denied of shutting a port, a sea, or even an entire country, against foreign commerce in some particular cases. But the exercise of such a right, unless in the case of a colonial system already established, or for some other special object, would be exposed to an unfavourable interpretation, as being contrary to the liberal spirit of modern times, wherein we look for the bonds of amity and of reciprocal commerce among all nations being more closely cemented.

Universal usage, which has obtained the force of law, has established for all the coasts an accessory limit of a moderate distance, which is sufficient for the security of the country and for the convenience of its inhabitants, but which lays no restraint upon the universal rights of nations, nor upon the freedom of commerce and of navigation. (Vattel, Book I, Chapter 23, section 289.)

At the fourth Conference (8th March, 1824) which preceded the signature of the Treaty of the 5th (17th) April, 1824, Mr. Middleton, the United States Representative, submitted to Count Nesselrode the following paper: American State Papers, Foreign Relations, vol. v. pp. 465–466.

(Translation.)

The dominion can not be acquired but by a real occupation and possession, and an intention ('animus') to establish it is by no means sufficient.

Now, it is clear, according to the facts established, that neither Russia nor any other European Power has the right of dominion upon the Continent of America between the 50th and 60th degrees of north latitude.

Still less has she the dominion of the adjacent maritime territory, or of the sea which washes these coasts, a dominion which is only accessory to the territorial dominion.

Therefore she has not the right of exclusion or of admission on these coasts, nor in these seas, which are free seas.

The right of navigating all the free seas belongs, by natural law, to every independent nation, and even constitutes an essential part of this independence.

The United States have exercised navigation in the seas, and commerce upon the coasts above mentioned, from the time of their independence; and they have a perfect right to this navigation and
52 to this commerce, and they can only be deprived of it by their own act or by a Convention.

CONVENTION BETWEEN THE UNITED STATES AND RUSSIA.

THE TREATY (RUSSIA AND THE UNITED STATES), APRIL 17, 1824.

The result of these negotiations between the United States and Russia was the Convention of the 17th April, 1824, which put an end to any further pretension on the part of Russia to restrict navigation or fishing in Behring Sea, so far as citizens of the United States were concerned. For French text, see Appendix, vol. ii, Part III, No. 1. Blue Book, "United States No. 1 (1891)," p. 57. Appendix, vol. iii.

The English version of the Convention is as follows:

ARTICLE I.

NAVIGATION OF PACIFIC TO BE FREE.

It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles:

ARTICLE II.

With a view of preventing the rights of navigation and of fishing, exercised upon the Great Ocean by the citizens and subjects of the

High Contracting Powers, from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian Establishment, without the permission of the Governor or Commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any Establishment of the United States upon the north-west coast.

ARTICLE III.

It is, moreover, agreed that hereafter there shall not be formed by the citizens of the United States, or under the authority of the said States, any Establishment upon the north-west coast of America, nor in any of the islands adjacent, to the north of 54° 40′ of north latitude; and that, in the same manner there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

ARTICLE IV.

It is, nevertheless, understood that, during a term of ten years, counting from the signature of the present Convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbours, and creeks upon the coast mentioned in the preceding Article, for the purpose of fishing and trading with the natives of the country.

53 ARTICLE V.

All spirituous liquors, firearms, other arms, powder, and munitions of war of every kind are always excepted from this same commerce permitted by the preceding Article; and the two Powers engage reciprocally neither to sell, or suffer them to be sold to the natives, by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced, in any case, to authorize either search or detention of the vessels, seizure of the merchandize, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the High Contracting Powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this Article, by their respective citizens or subjects.

ARTICLE VI.

When this Convention shall have been duly ratified by the President of the United States, with the advice and consent of the Senate on the one part, and on the other, by His Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington in the space of ten months from the date below, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this Convention, and thereto affixed the seals of their arms.

Done at St. Petersburgh the 5th (17th) April in the year of Grace 1824.

[L. S.] HENRY MIDDLETON,
[L. S.] Le Comte C. DE NESSELRODE.
[L. S.] PIERRE DE POLETICA.

CONVENTION BETWEEN GREAT BRITAIN AND RUSSIA.

TREATY (GREAT BRITAIN AND RUSSIA), FEBRUARY 25, 1825

For French text see Appendix, vol. ii, Part III, No. 2.

The negotiations between Great Britain and Russia resulted in the Convention of the 28th of February, 1825. The following is the English translation of this convention:

NAVIGATION OF PACIFIC TO BE FREE.

ARTICLE I.

See Blue Book, "United States No. 1 (1891)," p. 58. Appendix, vol. iii.

It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles.

ARTICLE II.

In order to prevent the right of navigating and fishing exercised upon the ocean by the subjects of the High Contracting Parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land without permission at any British establishment on the north-west coast.

ARTICLE III.

The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the islands of America to the north-west, shall be drawn in the manner following:

Commencing from the southernmost part of the island called Prince of Wales Island, which point lies in the parallel of 54° 40′ north latitude, and between the 131st and the 133rd degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian-line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

ARTICLE IV.

With reference to the line of demarcation laid down in the preceding Article, it is understood;

1st. That the island called Prince of Wales Island shall belong wholly to Russia.

2nd. That wherever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at a distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom

ARTICLE V.

It is moreover agreed that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding Articles to the possessions of the other; consequently British subjects shall not form any establishment either upon the coast or upon the border of the continent comprised within the limits of the Russian possessions, as designated in the two preceding Articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

ARTICLE VI.

It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention.

ARTICLE VII.

It is also understood that, for the space of ten years from the signature of the present Convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purposes of fishing and of trading with the natives.

ARTICLE VIII.

The port of Sitka, or Novo Archangelsk, shall be open to the commerce and vessels of British subjects for the space of ten years from the date of the exchange of the ratifications of the present Convention. In the event of an extension of this term of ten years being granted to any other Power, the like extension shall be granted also to Great Britain.

ARTICLE IX.

The above-mentioned liberty of commerce shall not apply to the trade in spirituous liquors, in fire arms, or other arms, gunpowder, or other warlike stores; the High Contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or delivered, in any manner whatever, to the natives of the country.

ARTICLE X.

Every British or Russian vessel navigating the Pacific Ocean which may be compelled by storms or by accident to take shelter in the ports of the respective Parties, shall be at liberty to refit therein, to provide itself with all necessary stores, and to put to sea again, without paying any other than port and lighthouse dues, which shall be the same as those paid by national vessels. In case, however, the master of such vessel should be under the necessity of disposing of a part of his merchandise in order to defray his expenses, he shall conform himself to the Regulations and Tariffs of the place where he may have landed.

ARTICLE XI

56 In every case of complaint on account of an infraction of the Articles of the present Convention, the civil and military authorities of the High Contracting Parties, without previously acting or taking any forcible measure, shall make an exact and circumstantial report of the matter to their respective Courts, who engage to settle the same in a friendly manner and according to the principles of justice.

ARTICLE XII.

The present Convention shall be ratified, and the ratifications shall be exchanged at London within the space of six weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same and have affixed thereto the seal of their arms.

Done at St. Petersburgh the 16th (28th) day of February, in the year of our Lord One thousand eight hundred and twenty-five.

[L. S.] STRATFORD CANNING.
[L. S.] The Count DE NESSELRODE.
[L. S.] PIERRE DE POLITICA.

Mr. Stratford Canning to Mr. G. Canning, in his despatch of the 1st March, 1825, inclosing the Convention as signed, says:

See Appendix, vol. ii, Part 1, No. 56.

With respect to Behring Straits, I am happy to have it in my power to assure you, on the joint authority of the Russian Plenipotentiaries, that the Emperor of Russia has no intention whatever of maintaining any exclusive claim to the navigation of those straits, or of the seas to the north of them.

Mr. S. Canning, in a further despatch to Mr. G. Canning, 3rd (15th) April, 1825, said:

Ibid., No. 57.

. . . With respect to the right of fishing, no explanation whatever took place between the Plenipotentiaries and myself in the course of our negotiations. As no objection was started by them to the

Article which I offered in obedience to your instructions, I thought it unadvisable to raise a discussion on the question; and the distance from the coast at which the right of fishing is to be exercised in common passed without specification, and consequently rests on the law of nations as generally received.

Conceiving, however, at a later period that you might possibly wish to declare the law of nations thereon, jointly with the Court of Russia, in some ostensible shape, I broached the matter anew to Count Nesselrode, and suggested that he should authorize Count Lieven, on your invitation, to exchange notes with you declaratory of the law as fixing the distance at 1 marine league from the shore.

57 Count Nesselrode replied that he should feel embarrassed in submitting this suggestion to the Emperor just at the moment when the ratifications of the Convention were on the point of being dispatched to London; and he seemed exceedingly desirous that nothing should happen to retard the accomplishment of that essential formality. He assured me at the same time that his Government would be content, in executing the Convention, to abide by the recognized law of nations; and that, if any question should hereafter be raised upon the subject, he should not refuse to join in making the suggested declaration, on being satisfied that the general rule under the law of nations was such as we supposed.

Having no authority to press the point in question, I took the assurance thus given by Count Nesselrode as sufficient, in all probability, to answer every national purpose. . . .

The claim of Russia attracted much attention at the time.

UNITED STATES INTERPRETATION OF RUSSO-AMERICAN TREATY.

President Monroe wrote to Mr. Madison on the 2nd August, 1824, with reference to the Convention of that year, to the effect that—

By this Convention the claim to the *mare clausum* is given up, a very high northern latitude is established for our boundary with Russia, and our trade with the Indians placed for ten years on a perfectly free footing, and after that term left open for negotiation. . . . England will, of course, have a similar stipulation in favour of the free navigation of the Pacific, but we shall have the credit of having taken the lead in the affair.

Wharton, Digest of International Law, section 159, vol. ii, p. 226.

In answer to the above, Mr. Madison wrote to President Monroe on the 5th August, 1824:

The Convention with Russia is a propitious event, as substituting amicable adjustment for the risk of hostile collision. But I give the Emperor, however, little credit for his assent to the principle of "*mare Liberatum*" [*sic*] in the North Pacific. His pretensions were so absurd, and so disgusting to the maritime world, that he could not do better than retreat from them through the forms of negotiation. It is well that the cautious, if not courteous, policy of England towards Russia has had the effect of making us, in the public eye, the leading Power in arresting her expansive ambition.

Letters and Writings of James Madison, Philadelphia, 1865, p. 446.

THE UKASE NEVER ENFORCED.

In the year 1822 the Russian authorities attempted to enforce the provisions of the Ukase of 1821 and seized the United States brig "Pearl," when on a voyage from Boston to Sitka. The circumstances of this case are stated in the next Chapter.

See letter of S. Canning to G. Canning, April 23, 1823. Appendix, vol. ii, Part 1, No. 24.

See *post*, p. 78.

58 It is sufficient for the present purpose to note that the United States at once protested, the "Pearl" was released, and compensation paid for her arrest and detention.

This is believed to be the only case in which any attempt was, in practice, made by Russia to interfere with any ship

of another nation in the waters in question outside of territorial limits.

The facts disclosed in this Chapter show—

That the Ukase of the Emperor Paul in the year 1821—the first and only attempt on the part of Russia to assert dominion over, and restrict the rights of other nations in, the non-territorial waters of the North Pacific, including those of Behring Sea—was made the subject of immediate and emphatic protest by Great Britain and the United States of America,

That Russia thereupon unequivocally withdrew her claims to such exclusive dominion and right of control.

That the Conventions of 1824 and 1825 declared and recognized the rights of the subjects of Great Britain and the United States to navigate and fish in all parts of the non-territorial waters over which the Ukase purported to extend.

CHAPTER III.

59 HEAD C.—*The question whether the body of water now known as the Behring Sea is included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia.*

It will be remembered that the Ukase of 1821 included the Pacific from the Behring Strait southward to the 51st parallel, and that this claim was protested against *in toto*, on the ground that the coast was almost entirely unoccupied, and that maritime jurisdiction, even where the coast was occupied, could not extend beyond 3 miles.

In the first Articles of the Conventions of 1824 and 1825 the claim to an extraordinary jurisdiction at sea was definitely abandoned, and the abandonment was a complete withdrawal of the claim made. It was principally against this very claim that the protest of Great Britan and the United States were directed, and its relinquishment was therefore, and purposely, placed at the head of each of the resulting Conventions.

Article I of the Convention between Russia and the United States is as follows:

It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles.

Article I of the Convention between Great Britain and Russia is as follows:

It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles.

It has been contended, however, on the part of the United States, that the renunciation of claims contained in the Articles above quoted did not extend to what is now known as Behring Sea.

On this point Mr. Blaine, Secretary of State for the United States, writes:

Mr. Blaine to Sir J. Pauncefote, Blue Book, United States No. 1, 1891, p. 37. See Appendix, vol. iii.

60 The United States contends that the Behring Sea was not mentioned, or even referred to, in either Treaty, and was in no sense included in the phrase "Pacific Ocean." If Great Britain can maintain her position that the Behring Sea at the time of the Treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her.

NORTH-WEST COAST.

In order to uphold the contention thus advanced by the United States, it is, however, further found necessary to maintain that the words "north-west coast" and "north-west coast of America," which frequently occur in the correspondence connected with those Conventions, refer only to a portion of the coast of the continent south of Behring Sea. This portion of the coast Mr. Blaine endeavours to define precisely in his letter, which has just been quoted, illustrating his meaning by maps, and seeking to restrict the application of the term to that part of the coast which runs southward continuously from the 60th parallel. Ibid., p. 38.

The meaning of the phrase "Pacific Ocean" and that of the term "north-west coast" are thus intimately associated in the contention of the United States, and it will be convenient to treat them together.

MEANING OF THE PHRASE "PACIFIC OCEAN" AND THE TERM "NORTH-WEST COAST" IN THE TREATIES AND CORRESPONDENCE.

It will be found that such a construction of these phrases as Mr. Blaine has striven to place upon them cannot be reconciled with the correspondence. M. de Poletica to Mr. Adams, February 28, 1822. See Appendix, vol. ii, Part II, No. 1.

In the first place, it has already been shown that Russia's object was not the acquisition of the control of the sea between Behring Strait and latitude 51°—this she distinctly denied—but the exclusion from her coasts in Asia and America, and on the islands, of the traders whose ventures threatened the success of the Russian-American Company.

No claim had been advanced by Russia which could possibly render a distinction between Behring Sea and the main Pacific of the slightest importance.

On the contrary, in the Ukase of 1799, Russia asserted jurisdiction over her subjects on all hunting grounds and establishments on the coast of America from the 55° north latitude to Behring Strait and thence southward to

61 Japan, and on the Aleutian, Kurile, and other Islands in all the "north-eastern" ocean.

In 1821, Russia was endeavouring to assert a title to the whole coast from Behring Strait to 51° north latitude on the American, and latitude 45° 50′ on the Asiatic coast.

Her claim to an extraordinary maritime jurisdiction over the non-territorial waters of the ocean was definitively abandoned at the outset of the negotiations, and the discussion was thenceforward confined to the protection of her rights within territorial limits.

Russia's object was the recognition and protection of the Russian Settlements in America. Accordingly, the Conventions provide against "illicit commerce," landing "at any place [from Behring Strait to the southernmost boundary] where there may be a Russian establishment without the permission of the Governor or Commandant," and against the formation of Establishments by either Power (in the respective Conventions) on territory claimed by, or conceded to, the other.

USAGE OF THE TERMS IN OFFICIAL CORRESPONDENCE.

See Appendix, vol. i, No. 1. With the same object rules were made by Russia, headed "Rules established for the Limits of Navigation and Order of Communication along the coast of the Eastern Siberia, the *north-west-coast of America*, and the Aleutian, Kurile, and other Islands." This obviously included the American coast of Behring Sea in the term "north-west coast."

Ibid., vol. ii, Part I, No. 1. Baron Nicolay, writing to Lord Londonderry, 31st October (12th November), 1821, says:

(Translation.)

"NORTH-WEST COAST."

The new Regulation does not forbid foreign vessels to navigate the seas which wash the Russian possessions on the *north-west coast of America* and the north-east coast of Asia.

* * * * *

On the other hand, in considering the Russian possessions which extend on the *north-west coast of America*, from Behring Strait to 51° of north latitude, and also on the opposite coast of Asia and the adjacent islands, from the same Strait to 45°, &c.

* * * * *

"PACIFIC OCEAN."

For, if it is demonstrated that the Imperial Government would, strictly speaking, have had the power to entirely close to foreigners that part of the *Pacific Ocean* on which our possessions in America and Asia border, there is all the more reason why the right, in virtue of which it has just adopted a measure much less generally restrictive, should not be called in question.

* * * * *

62 The officers commanding the Russian vessels of war, which are to see to the maintenance of the above-mentioned arrangements in the *Pacific Ocean*, have been ordered to put them into force against those foreign vessels, &c.

In this note "north-west coast of America" is mentioned three times, and in each case the coast of Behring Sea is included in the term. "Pacific Ocean" appears twice, and in both instances includes the Behring Sea.

A map, published officially by Russian authorities, of which a copy is included among the documents annexed to this Case, was forwarded from St. Petersburg by Sir Charles Bagot to Lord Londonderry, in a despatch dated the 17th November, 1821, in which it is thus described:

For map, see Appendix, vol. iv, No. 1. See Appendix, vol. ii, Part I No. 4.

I have the honour to transmit to your Lordship, under a separate cover, an English translation of the Ukase, and I at the same time inclose a map of the north-west coasts of America, and the Aleutian and Kurile Islands, which has been published in the Quartermaster-General's Department here, and upon which I have marked all the principal Russian Settlements.

"NORTH-WEST COAST."

It will be seen on reference to this map that the words "part of the north-west coast of America" include the whole coast line from a point north of Behring Straits down to latitude 54° north.

Again Lord Londonderry writes to Count Lieven:

Lord Londonderry to Count Lieven, January 18, 1822. See Appendix, vol. ii, Part I, No. 7.

The Undersigned has the honour hereby to acknowledge the note, addressed to him by Baron de Nicolay of the 12th November last, covering a copy of an Ukase issued by His Imperial Majesty the Emperor of All the Russias, and bearing date the 4th September, 1821, for various purposes, therein set forth, especially connected with the territorial rights of his Crown on the *north-western coast of America, bordering upon the Pacific*, and the commerce and navigation of His Imperial Majesty's subjects in the seas adjacent thereto.

And Mr. S. Canning writing in February 1822 to Lord Londonderry from Washington, where he was then British Minister, observes:

Mr. Stratford Canning to the Marquis of Londonderry, February 19, 1822. See Appendix, vol. ii, Part I, No. 9.

I was informed this morning by Mr. Adams that the Russian Envoy has, within the last few days, communicated officially to the American Government an Ukase of the Emperor of Russia, which has lately appeared in the public prints, appropriating to the sovereignty and exclusive use of His Imperial Majesty the *north-west coast of America* down to the 51st parallel of latitude, together with a considerable portion of the opposite coasts of Asia, and the neighbouring seas to the extent of 100 Italian miles from any part of the coasts and intervening islands so appropriated. In apprising me of this circumstance, Mr. Adams gave me to understand that it was not the intention
63 of the American Cabinet to admit the claim thus notified on the part of Russia. His objection appears to lie more particularly against the exclusion of foreign vessels to so great a distance from the shore.

Again M. de Poletica, writing to Mr. Adams on the 28th February, 1822:

See Appendix, vol. ii, Part II, No. 1.

The first discoveries of the Russians on the north-west continent of America go back to the time of the Emperor Peter I. They belong to the attempt, made towards the end of the reign of this great Monarch, to find a passage from *the icy sea* into the *Pacific Ocean*.

* * * * *

When, in 1799, the Emperor Paul I granted to the present American Company its first Charter, he gave it the exclusive possession of the *north-west coast of America*, which belonged to Russia, from the 55th degree of north latitude to Behring Straits.

* * * * *

From this faithful exposition of known facts, it is easy, sir, as appears to me, to draw the conclusion that the rights of Russia, to the extent of the *north-west coast*, specified in the Regulation of the Russian-American Company, rest, &c.

*

The Imperial Government, in assigning for limits to the *Russian possessions on the north-west coast of America, on the one side Behring Straits, and on the other the 51st degree* of north latitude, has, &c.

* * * * *

"PACIFIC OCEAN."

I ought, in the last place, to request you to consider, sir, that the *Russian possessions in the Pacific Ocean extend on the north-west coast of America from Behring Straits to the 51st degree of north latitude*, and on the opposite side of Asia and the islands adjacent from the same strait to the 45th degree.

Throughout this note the phrase "north-west coast" includes the coast of Behring Sea, and the last passage shows unmistakably that the Russians at that time regarded the Pacific Ocean as extending to Behring Strait.

The attention of the British Government was called to the Ukase by the Hudson's Bay Company in the following terms:

"NORTH-WEST COAST."

Hudson's Bay Company to the Marquis of Londonderry, March 27, 1822. See Appendix, vol. ii, Part I, No. 10.

It has fallen under the observation of the Governor and Committee of the Hudson's Bay Company that the Russian Government have made a claim to the *north-west coast of America from Behring Straits* to the 51st degree of north latitude; and in an Imperial Ukase have prohibited foreign vessels from approaching the coast within 100 miles, under penalty of confiscation.

Mr. Adams to Mr. Rush, July 22, 1823. American State Papers, Foreign Relations, vol. v, p. 446. See Appendix, vol. ii, Part II, No. 4. See Appendix, vol. i, Nos. 3 and 4.

Mr. Adams, in 1823, dealt with the Russian claim as one of exclusive territorial right on the north-west coast of America, extending, as he said, from the "northern extremity of the continent." Articles in the "North American Review" (Vol. xv, article 18), and "Quarterly
64 Review" (1821-'22, Vol. xxvi, p. 344), published at the time of the controversy, and already referred to as mentioned with approbation by Mr. Adams, in 1824-'25, use the words "north-west coast" with the same signification.

American State Papers, Foreign Relations, vol. v, p. 436.

See Appendix, vol. ii, Part II, No. 3.

Mr. Adams, in his despatch of the 22nd July, 1823, to Mr. Middleton, referred to the Ukase of the Emperor Paul as purporting to grant to the American Company the "exclusive possession of the *north-west coast of America*, which belonged to Russia, from the 55th degree of *north latitude to Behring Strait*."

The fact that the whole, and not merely a particular portion, of the territorial and maritime claim advanced by the Ukase was in question, and was settled by the Treaties of 1824 and 1825, also appears from the Memorial laid by Mr. Middleton, on the part of the United States, before the Russian Government on the 17th December, 1823:

American State Papers, vol. v, p. 452.

See Appendix, vol. ii, Part II, No. 5.

With all the respect which we owe to the declared intention and to the determination indicated by the Ukase, it is necessary to examine the two points of fact; (1) *If the country to the south and east of Behring Strait, as far as the 51st degree of north latitude, is found strictly unoccupied.* (2) If there has been, latterly, a real occupation of this vast territory? . . . The conclusion which must necessarily result from these facts does not appear to establish that the territory in question had been legitimately incorporated with the Russian Empire.

The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled.

In the earlier part of the same paper. Mr. Middleton observes:

The Ukase even goes to the *shutting up of a strait* which has never been till now shut up, and which is at present the principal object of discoveries, interesting and useful to the sciences.

The very terms of the Ukase bear that this pretension has now been made for the first time.

"PACIFIC OCEAN."

The same appears from Mr. G. Canning's despatch to Sir C. Bagot of the 24th of July, 1824 (which has been already quoted in any other connection): See Appendix, vol. ii, Part I, No. 44.

Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question. The first, the assumption of the base of the mountains, instead of the summit as the line of boundary; the second, the extension of the right *of navigation of the Pacific to the sea beyond Behring Straits.*

* * * * *

65 As to the second point, it is perhaps, as Count Lieven remarks, new. But it is to be remarked, in return, that the circumstances under which this additional security is required will be new also.

By the territorial demarcation agreed to in this "Projet," Russia will become possessed, in acknowledged sovereignty of both sides, of Behring Straits.

The Power which could think of making the Pacific a *mare clausum* may not unnaturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner; *but the shutting up of Behring Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.*

Nor could we submit to be excluded, either positively or constructively, See ante, p. 32. *from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting not to this country alone, but to the whole civilized world.*

The protection* given by the Convention to the American coasts of each Power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but in some way or other, if not in the form now prescribed, the free navigation of *Behring Straits, and of the seas beyond them*, must be secured to us.

It would have been of little advantage to secure the right to navigate through Behring Strait unless the right to navigate the sea leading to it was secured, which would not have been the case if the Ukase had remained in full force over Behring Sea.

The frequent references to Behring Strait and the seas beyond it show that there was no doubt in the minds of the British statesmen of that day that, in obtaining an acknowledgment of freedom of navigation and fishing throughout the Pacific, they had also secured this right as far as Behring Strait.

As corroborative proof of the usual practice of the British naval authorities, in the nomenclature of these waters, reference may be made to the instructions given in 1825 by the Lords Commissioners of the Admiralty, which will be found in the "Narrative of a Voyage to the Pacific and Behring Strait," &c., under command of Captain F. W.

*(i. e.) By the extension of territorial jurisdiction to two leagues, as originally proposed in the course of the negotiations between Great Britain and Russia.

Beechey, R. N., in the years 1825-26-27-28, published by authority in London, 1831.

66 These instructions from the Lords Commissioners, which are full and detailed, make reference only to Behring Strait and the Pacific Ocean, and do not mention the Sea of Kamtchatka or Behring Sea.

COMMON MEANING OF "PACIFIC OCEAN" AND "NORTH-WEST COAST."

Greenhow's works.

The works of Mr. Robert Greenhow, Translator and Librarian to the United States Department of State (well known in connection with the discussion of the "Oregon question"), afford a detailed and conclusive means of ascertaining the views officially held by the United States Government on the meaning of *Pacific Ocean*, *Behring Sea*, *North-west coast*, and the extent to which the claims made by Russia in the Ukase of 1821 were abandoned by the Convention of 1824.

"Memoir Historical and Political of the north-west coast of North America and the adjacent territories, illustrated by a map and a geographical view of these countries, by Robert Greenhow, Translator and Librarian to the Department of State." Senate, 26th Cong., 1st Session (174), 1840. The same Memoir, separately printed, apparently in identical form, and with the same map, and pagination, Wiley and Putnam, New York, 1840.

A "Memoir" was prepared by Mr. Greenhow, on the official request of Mr. L. F. Linn, Chairman of a Select Committee on the Territory of Oregon, by order of Mr. John Forsyth, Secretary of State. It includes a map entitled "The North-west Coast of North America and adjacent Territories," which extends from below Acapulco in Mexico to above the mouth of the Kuskoquim in Behring Sea, and embraces also the greater part of the Aleutian chain.

"NORTH-WEST COAST."

Touching the signification of the terms *North-west coast* and *Pacific Ocean*, and the meaning attached to the relinquishment of Russian claims by the Convention of 1824, the first part of the "Memoir," under the heading "Geography of the Western Section of North America," contains the following passage:

The *north-west coast** is the expression usually employed in the United States at the present time to distinguish the vast portion of the American continent which extends north of the 40th parallel of latitude from the Pacific to the great dividing ridge of the *Rocky Mountains*, together with the contiguous islands in that ocean. The southern part of this territory, which is drained almost entirely by the River Columbia, is commonly called *Oregon*, from the supposition (no doubt erroneous) that such was the name applied to its principal stream by the aborigines. To the more northern parts of the continent many appellations, which will hereafter be mentioned, have been assigned by navigators and fur traders of various nations. The territory bordering upon the Pacific southward, from the 40th parallel

67 to the extremity of the peninsula which stretches in that direction as far as the Tropic of Cancer, is called *California*, a name of uncertain derivation, formerly applied by the Spaniards to the whole western section of North America, as that of *Florida* was

*N. B.—The *italics* in this and subsequent quotations are those employed by Greenhow himself.

employed by them to designate the regions bordering upon the Alantic. The north-west coast and the west coast of California, together form the *west coast of North America;* as it has been found impossible to separate the history of these two portions, so it will be necessary to include them both in this geographical view (p. 1).

Mr. Greenhow here gives the following note:

In the following pages the term *coast* will be used, sometimes as signifying only the sea-shore, and sometimes as embracing the whole territory, extending therefrom to the sources of the river; care has been, however, taken to prevent misapprehension, where the context does not sufficiently indicate the true sense. In order to avoid repetitions, the *north-west coast* will be understood to be the *north-west coast of North America;* all *latitudes* will be taken as *north latitudes*, and all *longitudes* as *west from Greenwich*, unless otherwise expressed.

The "Memoir" continues as follows:

"PACIFIC OCEAN."

The northern extremity of the west coast of America is *Cape Prince of Wales*, in latitude 65° 52′, which is also the westernmost spot in the whole continent; it is situated on the eastern side of *Beering's Strait*, a channel 51 miles in width, connecting the Pacific with the *Arctic* [or *Icy* or *North Frozen*] *Ocean*, on the western side of which strait, opposite Cape Prince of Wales, is *East Cape*, the eastern extremity of Asia. Beyond Beering Strait the shores of the two continents recede from each other. *The north coast of America* has been traced from Cape Prince of Wales north-eastward to *Cape Barrow*, &c., pp. 3, 4.

The relations of Behring Sea to the Pacific Ocean are defined as follows in the "Memoir":

The part of the Pacific north of the Aleutian Islands which bathes those shores is commonly distinguished as the *Sea of Kamtchatka*, and sometimes *Behring Sea*, in honour of the Russian navigator of that name who first explored it (pp. 4, 5).

Again, in the "Geography of Oregon and California," Mr. Greenhow writes:

"The Geography of Oregon and California and the other territories on the northwest coast of North America," New York, 1845.

Cape Prince of Wales, the westernmost point of America, is the eastern pillar of Behring Strait, a passage only 50 miles in width, separating that continent from Asia, and forming the only direct communication between the Pacific and Arctic Oceans.

. . . . . .

The part of the Pacific called the *Sea of Kamtchatka*, or Behring Sea, north of the Aleutian chain, likewise contains several islands, &c. (p. 4).

Greenhow's "History" was officially presented to the Government of Great Britain by the Government of the United States in July 1845, in connection with the Oregon discussion and in pursuance of an Act of Congress.*

In this History the Sea of Kamtchatka, or Behring's Sea, is again referred to as a part of the Pacific Ocean.

"The History of Oregon and California and the other territories on the north-west coast of North America, by Robert Greenhow, Translator and Librarian to the Department of State of the United States; author of a Memoir Historical and Political, on the north-west coast of North America, published in 1840 by direction of the Senate of the United States." New York, 1845.

* The following is the correspondence accompanying the presentation by the Government of the United States:

"Mr. Buchanan to Mr. Pakenham.

"DEPARTMENT OF STATE,
"Washington, July 12, 1845.

"SIR: In pursuance of an Act of Congress approved on the 20th of February, 1845, I have the honour to transmit to you herewith, for presentation to the Government of Great Britain, one copy of the 'History of Oregon, California, and the other territories on the North-west Coast

"Dictionnaire Géographique Universel," Tom. iv, Paris, 1823-33.

Mer Pacifique. Il s'étend du nord au sud depuis le Cercle Polaire Arctique, c'est-à-dire, depuis le Détroit de Behring, qui le fait communiquer à l'Océan Glacial Austral.

Seitz, Dr. J. C., "Geographisches Statistisches Handwörterbuch," Bd. iii, Pesth, 1822, Halberstadt, 1829.

Stilles Meer. Vom 30 südlicher Breite bis zum 5 nördlicher Breite verdient es durch seine Heiterkeit und Stille den namen des Stillen Meers; von da an bis zur Beringsstrasse ist es heftigen Stürmen unterworfen.

Arrowsmith, "Grammar of Modern Geography," London, 1832.

Bhering's Strait connects the Frozen Ocean with the Pacific.

The Anadir flows into the Pacific Ocean.

The principal gulfs of Asiatic Russia are: the Gulf of Anadir, near Bhering's Strait; the Sea of Penjina, and the Gulf of Okhotsk, between Kamtchatka and the mainland of Russia—all three in the Pacific Ocean.

"Précis de la Géographie Universelle," par Malte-Brun, Tom. ii, p. 181, Paris, 1831-37.

74 L'Océan Pacifique Boréal s'étend depuis le Détroit de Behring jusqu'au Tropique de Cancer.

Ibid., Tom. viii, p. 4.

Le Détroit de Behring. A commencer par ce détroit, le Grand Océan (ou Océan Pacifique) forme la limite orientale de l'Asie.

Langlois, "Dictionnaire de Geographie, Tom. i, Paris, 1838.

Behring (détroit célebre). Il joint l'Océan Glacial Arctique au Grand Océan.

"Penny Cyclopædia," vol. xvii, London, 1840.

The Pacific Ocean. Its boundary-line is pretty well determined by the adjacent continents, which approach one another towards the north, and at Behring's Strait which separates them, are only about 36 miles apart. This strait may be considered as closing the Pacific on the north.

"Dictionnaire Universel d'Histoire et de Géographie," par M. N. Bouillet, Paris, 1842.

Behring (Détroit de) À l'extrémité nord-est de l'Asie, sépare ce continent de l'Amérique et l'Ocean Glacial Arctique de l'Océan Pacifique.

Behring (Mer de), partie de l'Océan Pacifique.

"Dictionnaire Géographique et Statistique," par Adrien Guibert, Tom. i, Paris, 1850.

Behring (Détroit de). Canal de l'Océan . . . . unissant les eaux de l'Océan Pacifique à celles de l'Océan Arctique.

"The New American Cyclopædia," edited by George Ripley and Charles A. Dana, New York, 1851.

Pacific Ocean. Between longitude 70° west and 110° east, that is, for a space of over 180°, it covers the greater part of the earth's surface, from Behring's Straits to the Polar Circle, that separates it from the Antartic Ocean.

"Harper's Statistical Gazetteer of the World," vol. i, by J. Collins Smith, New York, 1855.

Behring Sea is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Behring Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean.

Imperial Gazetteer, vol. i, Glasgow, 1855.

Behring Sea, sometimes called the Sea of Kamtchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait.

"Grand Dictionnaire de Géographie Universelle," par S. N. Boscheron, Tom. i, Paris, 1856-57.

Behring (Détroit de). Canal du Grand Ocean unissant les eaux de l'Océan Pacifique à celles de l'Océan Glacial Arctique.

McCulloch's "Geographical Dictionary," edited by F. Martin, vol. iii, London, 1866.

Pacific Ocean. Its extreme southern limit is the Antarctic Circle, from which it stretches northward through 132° of latitude to Behring's Strait, which separates it from the Arctic Ocean.

"Grand Dictionnaire Universel," par P. La Rousse, Tom. ii, Paris, 1866-76.

Behring (Détroit de). Canal ou bras de mer unissant les eaux de l'Océan Glacial Arctique à celles de l'Océan Pacifique.

St. Martin, "Nouveau Dictionnaire de Géographie Universelle," Tom. i, Paris, 1879.

Behring (Détroit de). Passage qui unit l'Océan Glacial Arctique au Grand Océan.

Behring Sea, or Sea of Kamchatka, is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Behring Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean.

Lippincott's "Gazetteer of the World," Philadelphia, 1880.

Beringsstrasse. Meerenge das nordöstlichste Eismeer mit dem Stillen Ocean verbindend.

Ritter's "Geographisch Statistisch Lexicon," Bd. i. Leipzig, 1883.

Behring's Strait, connecting the North Pacific with the Arctic Ocean.

Blackie's "Modern Cyclopædia," vol. i, London, 1889 edition.

Behring's Sea, sometimes called the Sea of Kamchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait.

75 VIEWS OF ENGLISH AND AMERICAN JURISTS.

Finally, a few passages may be quoted from English and American publicists of acknowledged eminence, to show the manner in which the general question has been viewed by them.

Dr. T. D. Woolsey, President of Yale College, "Introduction to the Study of International Law," 3rd edition, New York, 1872, p. 83:

Woolsey, "Introduction to International Law," 3rd edition, New York, 1872, p. 83.

Russia, finally, at a more recent date, based an exclusive claim to the Pacific, north of the 51st degree, upon the ground that this part of the ocean was a passage to shores lying exclusively within her jurisdiction. But this claim was resisted by our government, and withdrawn in the temporary convention of 1824. A treaty of the same empire with Great Britain in 1825 contains similar concessions.

In referring to the Russian Ukase of 1821, Wharton, "Digest of International Law of the United States," Washington, 1886, vol. i, section 32, p. 3, speaks of Russia—

Wharton, "Digest of International Law," Washington, 1886, vol. i, section 32, p. 3.

Having asserted in 1822 to 1824 an exclusive jurisdiction over the *north-west coast and waters of America from Behring Strait to the fifty-first degree of north latitude.*

Mr. Davis, Assistant Professor of Law at the United States Military Academy, "Outlines of International Law," New York, 1887, p. 44:

Davis, "Outlines of International Law," New York, 1887, p. 44.

Russia, in 1822, laid claim to exclusive jurisdiction over that part of the Pacific Ocean lying north of the 51st degree of north latitude, on the ground that it possessed the shores of that sea on both continents beyond that limit, and so had the right to restrict commerce to the coast inhabitants.

A recent United States writer, Professor J. B. Angell, discussing this subject, says:

Jas. B. Angell, in the "Forum," November, 1889; "American Rights in Behring Sea."

The Treaty of 1824 secured to us the right of navigation and fishing in any part of the great ocean, commonly called the Pacific Ocean, or South Sea, and (in Article IV) for ten years that of frequenting the interior seas, gulfs, harbours, and creeks upon the coast for the purpose of fishing and trading. At the expiration of ten years Russia refused to renew this last provision, and it never was formally renewed. But, for nearly fifty years at least, American vessels have been engaged in taking whales in Behring Sea without being disturbed by the Russian Government. Long before the cession of Alaska to us, hundreds of our whaling vessels annually visited the Arctic Ocean and Behring Sea, and brought home rich cargoes. It would seem, therefore, that Russia regarded Behring Sea as a part of the Pacific Ocean, and not as one of the "interior seas," access to which was forbidden by the termination of the IVth Article of the Treaty.

See Appendix, vol. i, No. 8.

76 Sir R. Phillimore, in the 2nd edition of "Commentaries upon International Law," vol. i, p. 241, remarks:

Phillimore, "International Law," 2nd edition, vol. i, p. 241. [3rd edition, p. 290].

In 1822 Russia laid claim to a sovereignty over the Pacific Ocean north of the 51st degree of latitude: but the Government of the United States of America resisted this claim as contrary to the principles of international law.

Alaska, p. 548. 79 In 1827, Lütke, sent by the Russian Government, arrived at Sitka, and thereafter made explorations in the Aleutian Islands and in Behring Sea.

North-west Coast, vol. i, p. 341. Two vessels only of the trading fleet on the north-west coast are in this year known by name.

Alaska, p. 546. In 1828, two vessels belonging to Lütke's expedition carried on surveys in Behring Sea. The trading vessel "Eliza" was at Sitka in this year.

Letter of Brewer to Amory, H. R., Ex. Doc., 40th Cong., 2nd Sess., No. 177, p. 85. In the years 1826, 1827, and 1828 the "Chinchella," a United States brig, Thomas Meek, master, was trading between Sitka and China.

Alaska, p. 565. In 1829, a Russian vessel was sent from Sitka to Chile to trade. Some explorations were also made by the Russians in the inland country.

Ibid., p. 547. In 1830, explorations were made in Behring Sea by Etholen. Wrangell relieved Chistiakof in command. The

North-west Coast, vol. i, p. 341. names of four or five foreign vessels trading on the north-west coast in this and the following year are recorded.

Alaska, pp. 548–552. In 1832 or 1833; Tebenkof established a post near the mouth of the Yukon, and explorations were conducted inland.

Ibid., p. 555. In 1833, the Hudson's Bay Company sent the British vessel "Dryad" to form an Establishment at the mouth of the Stikine, but Wrangell, having heard of the enterprise, occupied the place in advance, and turned the vessel back. Damages to the amount of £20,000 were claimed through

See post, p. 83. the British Government from Russia. This will be referred to later.

Ibid., p. 583. A United States whaling master, under a five years' Contract with the Russian Company, arrived at Sitka, but achieved little.

North-west Coast, vol. i, p. 341. In 1834, the name of but one of the foreign vessels trading on the north-west coast is recorded.

Ibid., pp. 341, 342. In 1836, the "Eliza" was again at Sitka, and three foreign trading vessels are recorded to have visited the Alaskan coast.

CASE OF THE "LORIOT."

In the same year the United States brig "Loriot" sailed from the Sandwich Islands for the north-west coast

80 of America for the purpose of procuring provisions, and also Indians to hunt for sea-otters on the coast. When in the Harbour of Tuckessan, latitude 54° 55′ north, and longitude 132° 30′ west, a Russian armed brig ordered the "Loriot" to leave. This action was based on the expiration of the period named in the IVth Article of the Treaty, whereby, for ten years only, liberty to touch and trade at Russian Establishments on the coast was granted.

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 233. The United States protested against the interference with the "Loriot," characterizing it as an "outrage," and

See Appendix, vol. ii, Part II, No. 6. the following is an extract from instructions which were sent by the United States Secretary of State to Mr. Dallas, the Minister at St. Petersburg, under date 4th May, 1837:

On the other hand, should there prove to be no Russian Establishments at the places mentioned, this outrage on the "Loriot" assumes a still graver aspect. It is a violation of the right of the citizens of the United States, immemorially exercised, and secured to them as well

by the law of nations as by the stipulations of the 1st Article of the Convention of 1824, to fish in those seas, and to resort to the coast, for the prosecution of their lawful commerce upon points not already occupied. As such, it is the President's wish that you should remonstrate, in an earnest but respectful tone, against this groundless assumption of the Russian Fur Company, and claim from His Imperial Majesty's Government for the owners of the brig "Loriot," for their losses and for the damages they have sustained, such indemnification as may, on an investigation of the case, be found to be justly due to them.

Mr. Dallas subsequently wrote that he was led to believe that Russian Establishments had been made at the places mentioned. Nevertheless, the United States contended that at the expiration of the IVth Article, the law of nations practically gave United States ships the privileges therein mentioned.

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 234. See Appendix, vol. ii, Part II, No. 7. Ibid., p. 236. See Appendix, vol. ii, Part II, No. 8.

Mr. Dallas (16th August, 1837) wrote to the Secretary of State:

Ibid., p. 234. See Appendix, vol. ii, Part II, No. 7.

The 1st Article asserts for both countries general and permanent rights of navigation, fishing, and trading with the natives, upon points not occupied by either, north or south of the agreed parallel of latitude.

Ibid., p. 236. See Appendix, vol. ii, Part II, No. 9.

Mr. Forsyth, Secretary of State for the United States, writing to Mr. Dallas on the 3rd November, 1837, and
81 referring to the 1st Article of the Convention of April, 1824, between the United States and Russia, said:

The 1st Article of that instrument is only declaratory of a right which the parties to it possessed under the law of nations without conventional stipulations, to wit, to navigate and fish in the ocean upon an unoccupied coast, and to resort to such coast for the purpose of trading with the natives.

. . . . .

The United States, in agreeing not to form new establishments to the north of latitude 54° 40′ N., made no acknowledgment of the right of Russia to the territory above that line.

And again:

It can not follow that the United States ever intended to abandon the just right acknowledged by the 1st Article to belong to them under the law of nations—to frequent any part of the unoccupied coast of North America for the purpose of fishing or trading with the natives. All that the Convention admits is an inference of the right of Russia to acquire possession by settlement north of 54° 40′ N. Until that actual possession is taken, the 1st Article of the Convention acknowledges the right of the United States to fish and trade as prior to its negotiation.

In his despatch of the 23rd February, 1838, Count Nesselrode, the Russian Foreign Minister, wrote to Mr. Dallas:

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 238. See Appendix, vol. ii, Part II, No. 10.

It is true, indeed, the 1st Article of the Convention of 1824, to which the proprietors of the "Loriot" appeal, secures to the citizens of the United States entire liberty of navigation in the Pacific Ocean, as well as the right of landing without disturbance upon all points on the north-west coast of America, not already occupied, and to trade with the natives.

Again, Mr. Dallas, in a despatch to Count Nesselrode, dated the 5th (17th) March, 1838, interpreted Article I of the Convention as being applicable to *any part of the Pacific Ocean*. He wrote:

Ibid., p. 241. See Appendix, vol. ii, Part II, No. 11.

. . . The right of the citizens of the United States to navigate the Pacific Ocean, and their right to trade with the aboriginal natives of the north-west coast of America, without the jurisdiction of other

nations, are rights which constituted a part of their independence as soon as they declared it. They are rights founded in the law of nations, enjoyed in common with all other independent sovereignties,
82 and incapable of being abridged or extinguished, except with their own consent. It is unknown to the Undersigned that they have voluntarily conceded these rights, or either of them, at any time, through the agency of their Government, by Treaty or other form of obligation, in favour of any community.

. . . . .

There is first a mutual and permanent agreement declaratory of their respective rights, without disturbance or restraint, to navigate and fish in any part of the Pacific Ocean, and to resort to its coasts upon points which may not already have been occupied, in order to trade with the natives. These rights pre-existed in each, and were not fresh liberties resulting from the stipulation. To navigate, to fish, and to coast, as described, were rights of equal certainty, springing from the same source, and attached to the same quality of nationality. Their exercise, however, was subjected to certain restrictions and conditions, to the effect that the citizens and subjects of the contracting sovereignties should not resort to points where establishments existed without obtaining permission; that no future establishments should be formed by one party north, nor by the other party south, of 54° 40′ north latitude; but that, nevertheless, both might, for a term of ten years, without regard to whether an establishment existed or not, without obtaining permission, without any hindrance whatever, frequent the interior seas, gulfs, harbours, and creeks, to fish and trade with the natives. This short analysis leaves, on the question at issue, no room for construction.

. . . . .

The Undersigned submits that in no sense can the fourth Article be understood as implying an acknowledgment, on the part of the United States, of the right of Russia to the possession of the coast above the latitude of 54° 40′ north.

President Van Buren's Message, December 3, 1838. State Papers, by Hertslet, vol. xxvi, p. 1330.

In transmitting the papers relative to the "Loriot" to Congress, the President of the United States observed:

The correspondence herewith communicated, will show the grounds upon which we contend that the citizens of The United States have, independent of the provisions of the Convention of 1824, a right to trade with the natives upon the coast in question at unoccupied places, liable, however, it is admitted, to be at any time extinguished by the creation of Russian establishments at such points. This right is denied by the Russian Government, which asserts that, by the operation of the Treaty of 1824, each party agreed to waive the general right to land on the vacant coasts on the respective sides of the degree of latitude referred to, and accepted, in lieu thereof, the mutual privileges mentioned in Article IV. The capital and tonnage employed by our citizens in their trade with the north-west coast of America
83 will, perhaps, on adverting to the official statements of the commerce and navigation of the United States for the last few years, be deemed too inconsiderable in amount to attract much attention; yet the subject may, in other respects, deserve the careful consideration of Congress.

HISTORICAL OUTLINE CONTINUED.

To return again to the chronological order of events—

North-west Coast, vol. i, p. 342.

In 1837, one foreign trading vessel is named as having been on the north-west coast.

Alaska, pp. 552, 553.

In 1838, further explorations were undertaken in the north by Chernof and Malakhof. Three foreign trading vessels are noted as having been on the north-west coast in this year, and one is known to have visited Alaskan waters.

North-west Coast, vol. i, p. 342. Alaska, pp. 536, 537.

In 1839 a Commission met in London to arrange the dispute between the Hudson's Bay and Russian American

Companies, arising out of the interference by Russian officials with the British vessel "Dryad." The claim for damages by the former Company was waived, on condition that the latter should grant a lease of all their continental territory northward to Cape Spencer, Cross Sound (about latitude 58°), on a fixed rental. This arrangement was for ten years, but was renewed, and actually continued in force for twenty-eight years.

In 1840, the British flag was hoisted and saluted at the mouth of the Stikine, the Hudson's Bay Company taking possession. A post was also established by the Company at Taku Inlet. Ibid. p. 557.

At this time whalers were just beginning to resort to Behring Sea; from 1840 to 1842 a large part of the fleet was engaged in whaling on the "Kadiak grounds." Writing in 1842, Etholen says, that for some time he had been constantly receiving reports from various parts of the Colony of the appearance of American whalers in the neighbourhood of the shores. Ibid., p. 583, Tikhmenieff. See Appendix, vol. i, No. 5.

In the same year Etholen relieved Kuprianof as Governor at Sitka. Alaska, p. 559.

In 1841, the Charter of the Russian-American Company was renewed for a further term of twenty years. Etholen reported the presence of fifty foreign whalers in Behring Sea. Ibid., p. 568.

In 1842, according to Etholen, thirty foreign whalers were in Behring Sea. Ibid., p. 583.

He asks the Russian Government to send cruisers to preserve this sea as a *mare clausum*.

84 His efforts were, however, unsuccessful, the Minister for Foreign Affairs replying that the Treaty between Russia and the United States gave to American citizens the right to engage in fishing over the whole extent of the Pacific Ocean.

In the same year, inland explorations by Zagoskin, which continued till 1844, began. Sir George Simpson, Governor of the Hudson's Bay Company, reached the Stikine post just in time to prevent an Indian uprising. He also visited the Russian Establishment at Sitka and completed an arrangement between the Companies to interdict trade in spirits on the coast. Alaska, pp. 553, 554. Ibid., pp., 558–560.

About this time the Russian-American Company became alarmed at the danger to their fur trade. Every effort was, therefore, put forward by the Company and the Governors to induce the Foreign Office of the Russian Government to drive off these whalers from the coasts, and by excluding them for a great distance from shore, prevent trespasses on shore and the traffic in furs.

In 1843, explorations were carried out by the Russians on the Sustchina and Copper Rivers. Ibid., p. 576.

The whalers, from 1843 to 1850, landed on the Aleutian and Kuttle Islands, committing depredations. United States captains openly carried on a traffic in furs with the natives. Ibid., pp. 583, 584.

Tikhmenieff writes:

> From 1843 to 1850 there were constant complaints by the Company of the increasing boldness of the whalers. Tikhmenieff. See Appendix, vol. i, No. 5.

In 1846 the Governor-General of Eastern Siberia asked that foreign whalers should not be allowed to come within 40 Italian miles of the Russian shores.

Tikhmenieff thus describes the result of these representations:

> The exact words of the letter from the Foreign Office are as follows: "The fixing of a line at sea within which foreign vessels should be prohibited from whaling off our shores would not be in accordance with the spirit of the Convention of 1824, and would be contrary to the provisions of our Convention of 1825 with Great Britain. Moreover the adoption of such a measure, without preliminary negotiation and arrangement with the other Powers, might lead to protests, since no clear and uniform agreement has yet been arrived at among nations in regard to the limit of jurisdiction at sea."

85 In 1847 a representation from Governor Tebenkof in regard to new aggressions on the part of the whalers gave rise to further correspondence. Some time before, in June 1846, the Governor-General of Eastern Siberia had expressed his opinion that, in order to limit the whaling operations of foreigners, it would be fair to forbid them to come within 40 Italian miles of our shores, the ports of Petropaulovsk and Okhotsk to be excluded, and a payment of 100 silver roubles to be demanded at those ports from every vessel for the right of whaling. He recommended that a ship of war should be employed as a cruizer to watch foreign vessels. The Foreign Office expressly stated as follows, in reply:

> "We have no right to exclude foreign ships from that part of the Great Ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whales."
>
> The Foreign Office were of opinion that the fixing of the line referred to above would reopen the discussions formerly carried on between England and France on the subject. The limit of a cannon shot, that is about 3 Italian miles, would alone give rise to no dispute. The Foreign Office observed, in conclusion, that no Power had yet succeeded in limiting the freedom of fishing in open seas, and that such pretensions had never been recognised by the other Powers. They were confident that the fitting out of colonial cruizers would put an end to all difficulties; there had not yet been time to test the efficacy of this measure.

Tikhmenieff. See Appendix, vol. i, No. 5. In 1847, traffic in fur-seal skins was carried on by a United States whaler at Behring Island.

In 1848, foreign whaling vessels entered the Arctic Ocean by way of Behring Straits for the first time.

Alaska, p. 584. In 1849, the whaling fleet in the Arctic and northern part of the North Pacific numbered 299 vessels. Two-thirds of these are said to have been United States vessels, but others were French and English, the latter chiefly from Australasia. A Russian Whaling Company for the North Pacific was formed at Abo, in Finland, with special privileges. This Company sent out six vessels in all.

Ibid., p. 572. In 1850, the British vessels "Herald," "Plover," and "Investigator," all despatched in search of Sir John Franklin's expedition, met in Kotzebue Sound, after passing through Behring Strait.

Ibid., p. 584. In the same year an armed Russian corvette was ordered to cruize in the Pacific, and in this year it is esti-

86 mated that 300, and in later years as many as 500 foreign whalers visited the Arctic and neighbouring waters.

Alaska, p. 585. Tebenkof's administration came to an end in this year.

Ibid., p. 572. In 1851, Nulato, a fort on the Yukon some way inland, was surprised by Indians and the inmates butchered,

including Lieutenant Barnard, an English officer of Her Majesty's ship "Enterprise," one of the ships engaged in the expedition in search of Sir John Franklin. The "Enterprise" passed Behring Strait on the 6th May, 1851. The United States whaling fleet is said to have been as numerous as in 1849.

"Encyclopædia Britannica," vol. xix, p. 321.

The interval between the close of Tebenkof's administration and the beginning of that of Voievodsky was filled by the temporary appointment of Rosenburg and Rudakof.

Alaska, p. 566.

In 1852, buildings at the Hot Springs, near Sitka, were destroyed by the Indians.

Ibid., p. 574.

The value of catch of the whaling fleet in the North Pacific in this year is estimated at 14,000,000 dollars. After 1852 the whaling industry gradually decreased.

Ibid., p. 603.

In 1853, war impending between England and Russia, the Hudson's Bay and Russian-American Companies influenced their respective Governments to prohibit hostilities on the north-west coast of America.

Ibid., p. 570.

In the same year the Russian-American Company again specially requested the Government to prohibit whalers from entering Okhotsk Sea, but without success. Instructions were, however, issued to Russian cruizers to prevent whalers from entering bays or gulfs, or from coming within 3 Italian miles of the shores.

Tikhmenieff, See Appendix, vol i, No. 5.

Tikhmenieff gives the following details:

Some time before the Company had written to the Foreign Office (22nd March, 1853):

Ibid.

> If it is found impracticable entirely to prohibit for a time fishing by foreigners in the Sea of Okhotsk, as an inland sea, would it not, at any rate, be possible officially to prohibit whalers from coming close to our shores and whaling in the bays and among the islands, detaching one of the cruizers of the Kamtchatka flotilla for this service?

The instructions to cruizers were approved on the 9th December, 1853. The cruizers were to see that no
87 whalers entered the bays or gulfs, or came within 3 Italian miles of the shores of Russian America (north of 51° 41′), the Peninsula of Kamtchatka, Siberia, the Kadjak Archipelago, the Aleutian Islands, the Pribilof and Commander Islands, and the others in Behring Sea, the Kuriles, Sakhalin, the Shantar Islands, and the others in the Sea of Okhotsk to the north of 46° 30′ north. The cruizers were instructed constantly to keep in view that—

> Our Government not only does not wish to prohibit or put obstacles in the way of whaling by foreigners in the northern part of the Pacific Ocean, but allows foreigners to take whales in the Sea of Okhotsk, which, as stated in these instructions, *is, from its geographical position, a Russian inland sea.* (These words are in italics in the original.)

In 1854, 525 foreign whalers were in Behring Sea and its vicinity. In the same year Voievodsky was elected Governor for the Company.

Alaska, p. 584.

Ibid., p. 585.

In 1855, the Abo Whaling Company went into liquidation.

Ibid., p. 585.

In 1856, 366 foreign whalers were reported as in Behring Sea and vicinity.

Ibid., p. 584.

Bancroft reports that in the year 1857—

> Of the 600 or 700 United States whalers that were fitted out in 1857, at least one-half, including most of the larger vessels, were engaged in the North Pacific, . . . including, of course, Behring Sea.

Ibid., p. 668.

50th Cong., 2nd Sess. Sen. Ex. Doc. No. 106, p. 251. Seward to Clay. February 24, 1868. See Appendix, vol. ii, Part II, No. 12. See p. 114 of Case.

Captain Manuel Enos, of the United States barque "Java," stated in 1867 that he had whaled unmolested in the bays of Okhotsk Sea for seventeen years previously.

Alaska, p. 592.

In 1859, the cession of Alaska to the United States began to be discussed privately.

Ibid., pp. 578, 579.

In 1860, the Russian-American Company applied for a new Charter for twenty years, to date from the 1st January, 1862, and Reports as to the condition of the Company were called for by the Government.

Ibid., p. 580.

The Russian population of the American Colonies at this date, apparently including native wives, numbered 784: Creoles, 1,700; native population estimated at over 7,000.

Alaska, p. 669. 88

In 1862, the value of the catch of the North Pacific whaling fleet was estimated at 800,000 dollars.

Fishery Industries of the United States, sec. v, vol. i, p. 209.

In 1863, the United States brig "Timandra" was engaged in the cod fishery off Saghalien Island, Okhotsk Sea. In succeeding years a number of vessels resorted to this sea for the cod fishery.

Alaska, p. 579.

In 1864, Maksutof took temporary charge for the Russian Government of the Company's affairs.

Ibid.

In 1865, negotiations between the Russian Company and the Government continued, but terms such as the Company would accept could not be arrived at.

Fishery Industries of the United States, sec. v, vol. i, p. 210.

In the spring of this year, the "North Pacific cod-fish fleet" was organized. It comprised seven vessels, all of which are believed to have fished in Okhotsk Sea.

Alaska, p. 580.

In 1866, the Russian Government still contemplated renewing the Company's Charter on certain terms. A Californian Company entered into treaty for a lease of the "coast strip" of Alaska, then held by the Hudson's Bay Company.

Fishery Industries of the United States, sec. v, vol. i, p. 210.

Eighteen vessels were engaged in the Okhotsk Sea cod fishery. The "Porpoise" initiated the fishery in the Shumagan Group, Alaska, finding there "safe harbours, fuel, water, and other facilities for prosecuting this business." Several British Columbian schooners also fished in Alaskan waters.

In 1867, Alaska was sold by Russia to the United States for 7,200,000 dollars.

Ibid., p. 210.

Nineteen United States vessels fished for cod in Okhotsk Sea or in Alaskan waters, the Shumagan fleet consisting of three vessels. The total catch amounted to nearly 1,000,000 fish.

"Philadelphia North American Gazette," Friday, April 12, 1867. Ex. Doc. No. 177, 2nd Sess., 40th Cong., p. 39.

In 1867, before the cession of Alaska, the whaling interest of the United States in these seas are thus referred to by a Philadelphia paper:

> Our whaling interests are now heaviest in the seas adjacent to Russian-America, both above and below Behring Strait.

Alaska, p. 669.

The value of the catch of the North Pacific whaling fleet was estimated at 3,200,000 dollars.

Ibid., p. 593

In 1868, the lease of the "coast strip" of Alaska to the Hudson's Bay Company by the Russian-American Company expired.

89 STATISTICS OF UNITED STATES WHALING INDUSTRY.

NORTH PACIFIC GROUNDS, INCLUDING OKHOTSK AND BEHRING SEAS AND ARCTIC OCEAN.)

The growth and decline of the whaling industry during the years discussed in this chapter may be conveniently illustrated by the following table, which shows the number of United States vessels in the North Pacific whaling fleet from 1841 to 1867. It is taken from "The Fishery Industries of the United States," 1887, section 5, vol. ii, pp. 84–85.

"Fishery Industries of the United States," sec. 5, vol. ii, pp. 84–85.

(This list does not include whalers of other nationalities.)

Year.	Number of vessels.	Year.	Number of vessels.
1841	20	1855	217
1842	29	1856	178
1843	108	1857	143
1844	170	1858	106
1845	263	1859	176
1846	292	1860	121
1847	177	1861	76
1848	150	1862	53
1849	155	1863	42
1850	144	1864	68
1851	138	1865	59
1852	278	1866	95
1853	238	1867	90
1854	232		

WALRUS HUNTING.

The whaling vessels frequenting Behring Sea and the Arctic Ocean, from the first, engaged to a certain extent in walrus hunting, and about 1860 such hunting began to be an important secondary object with the whalers. In subsequent years many thousand barrels of walrus oil and great quantities of skins and ivory were secured.

Ibid., p. 314.

90 The facts stated in this chapter establish—

That from the year 1821 to the year 1867 the rights of navigation and fishing in the waters of Behring Sea were freely exercised by the vessels of the United States, Great Britain, and other foreign nations, and were recognized as existing by Russia;

That the waters of Behring Sea were treated by Russia as being subject to the provisions of the Treaties of 1824 and 1825.

cédées et de dresser tout autre acte qui sera nécessaire à l'accomplissement de cette transaction. Mais la cession, avec le droit de possession immédiate, doit toutefois être considérée complete et absolue à l'échange des ratifications, sans attendre la remise formelle.

91 ARTICLE V.

Immédiatement après l'échange des ratifications de cette convention, les fortifications et les postes militaires qui se trouveront sur le Territoire cédé seront remis à l'agent des États-Unis, et les troupes Russes qui sont stationnées dans le dit territoire seront retirées dans un terme praticable et qui puisse convenir aux deux parties.

ARTICLE VI.

En considération de la susdite cession, les États-Unis s'engagent à payer à la Trésorerie à Washington dans le terme de dix mois après l'échange des ratifications de cette convention, sept millions deux cent mille dollars en or, au Représentant diplomatique ou tout autre agent de Sa Majesté l'Empereur de toutes les Russies dument autorisé à recevoir cette somme. La cession du Territoire avec droit de souveraineté faite par cette convention, est déclarée libre et dégagée de toutes reservations, privileges, franchises, ou possessions par des compagnies Russes ou tout autre, légalement constituées ou autrement, ou par des associations, sauf simplement les propriétaires possédant des biens privés individuels, et la cession ainsi faite transfère tous les droits, franchises, et privileges appartenant actuellement à la Russie dans le dit Territoire et ses dépendances.

ARTICLE VII.

Lorsque cette Convention aura été dûment ratifiée par Sa Majesté l'Empereur de toutes les Russies d'une part, et par le Président des États-Unis avec l'avis et le consentement du Sénat de l'autre, les ratifications en seront échangées à Washington dans le terme de trois mois, à compter du jour de la signature, ou plus tôt si faire se peut.

En foi de quoi les plénipotentiaires respectifs ont signé cette convention et y ont apposé le sceau de leurs armes.

Fait à Washington, le 18 (30) jour de Mars, de l'an de Notre Seigneur mille huit cent soixante-sept.

[L. S.] ÉDOUARD DE STOECKL.
[L. S.] WILLIAM H. SEWARD.

THE TREATY DISCUSSED.

It may be remarked, in the first place, that though the expression "water boundary" in the question at the head of this chapter may be accepted as an approximate paraphrase of the original expression employed in the Treaty, it is not a correct translation of the words "la limite occidentale des territoires cédés," which are rendered in the official English translation, published by the United States Government, "the western limit within which the territories and dominion conveyed are contained."

United States Statutes at Large, vol. xv, 1869, pp. 539–543.

95 NO SPECIAL DOMINION OVER WATERS.

It will be observed that in none of these Articles is there a reference to any extraordinary or special dominion over the waters of the Behring Sea, nor, indeed, over any other portion of the North Pacific Ocean. Even in the passage last cited the word "dominion" appears to have no equivalent in the original French version. Neither is there a suggestion that any special maritime right existed which could be conveyed. The language of the Convention is, on the

contrary, most carefully confined to *territory* with the right of sovereignty actually possessed by Russia at the date of the cession.

In Article I the limits of a portion of the Behring Sea are defined in order to show the boundaries within which the territory ceded "sur le Continent d'Amérique ainsi que les iles contiguës" is contained.

In Article VI, Russia again makes it emphatic that she is conveying "les droits, franchises, et privilèges appartenant actuellement à la Russie dans le dit Territoire et ses dépendances."

The final clause of Article I distinctly negatives any implication of an attempt to convey any portion of the high seas—for the said western line is drawn, not so as to embrace any part of the high seas, but, as expressed in the apt language of the Treaty—"*de manière à enclurer, dans le dit territoire cédé, toutes les Iles Aléoutes situées à l'est de ce méridien.*"

Had the intention been to convey the waters of the Behring Sea eastward of the western limit, the words "ainsi que les iles contigües" would not have been used, but words would have been chosen to indicate the area of the open sea conveyed, and it would have been unnecessary to specifically mention the islands.

CHARACTER OF THE WESTERN GEOGRAPHICAL LIMIT, AND REASON FOR ITS ADOPTION. ALEUTIAN ISLANDS, ETC.

There was good reason for a line of demarcation of the character specified.

The islands in the Aleutian chain and in Behring Sea were not well defined geographically, and could therefore not be used for the accurate delimitation of territory ceded.

In fact, even the term Aleutian Archipelago was indefinite in its signification, often including islands which were on the Asiatic side of Behring Sea, and far from the Island of Attu, the westernmost island of the Aleutian group intended to be ceded.

96 Greenhow, for instance, writes:

The *Aleutian Archipelago* is considered by the Russians as consisting of *three groups* of islands. Nearest Alaska are the *Fox Islands*, of which the largest are *Unimak*, *Unalashka*, and *Umnak*; next to these are the *Andreanowsky Islands*, among which are *Atscha*, *Tanaga*, and *Kanaga*, with many smaller islands, sometimes called the *Rat Islands*; the most western group is that first called the *Aleutian* or *Alcoutsky Islands*, which are *Attu*, *Mednoi* (or *Copper Island*), and *Beering's Island* (p. 5).

"Memoir, Historical and Political, of the Northwest Coast of North America, &c., by Robert Greenhow, Translator and Librarian to the Department of State." Senate, 26th Cong., 1st Sess. [174], 1840.

In the "History of Oregon and California," &c., by the same author, the Commander Islands (Copper and Behring Islands) are again classed among the Aleutian Islands, which are said to be included under two governmental districts by the Russians, the Commander Islands belonging to the western of these districts (p. 38). Greenhow also states that the name "Aleutian Islands" was first applied to Copper and Behring Islands.

Indeed, in many maps of various dates, the title Aleutian Islands is so placed as impliedly to include the Commander Islands, in some it is restricted to a portion of the chain now recognized by that name. Similar diversity in usage, with frequent instances of the inclusion of the Commander Islands as a part of the Aleutian Islands is found in geographical works of various dates.

From this uncertainty in usage in respect to the name of the Aleutian Islands (though these are now commonly considered to end to the westward at Attu Island), it is obvious that, in defining a general boundary between the Russian and United States possessions, it might have given rise to grave subsequent doubts and questions to have stated merely that the whole of the Aleutian Islands belonged to the United States. Neither would this have covered the case presented by the various scattered islands to the north of the Aleutian chain proper, while to have enumerated the various islands, which often appeared and still sometimes appear on different maps under alternative names, would have been perplexing and unsatisfactory, from the very great number of these to be found in and about Behring Sea.

It was thus entirely natural to define conventionally a general division fixed by an imaginary line so drawn as according to the best published maps to avoid touching any known island.

IMPERFECT SURVEY OF BEHRING SEA.

97 The occasion for a western limit of the kind adopted is the more obvious, when it is borne in mind that many of the islands in and about Behring Sea are even at the present day very imperfectly surveyed, and more or less uncertain in position.

Appendix No. 2 of United States Coast Survey. Coast Pilot of Alaska, 1869. Part I, p. 203.

The following is from the "Coast Pilot of Alaska" (United States Coast Survey 1869):

The following list of the geographical positions of places, principally upon the coast of Alaska, has been compiled chiefly from Russian authorities. In its preparation the intention was to introduce all determinations of position that appeared to have been made by actual observation, even when the localities are quite close. In the Archipelago Alexander most of Vancouver's latitudes have been introduced, although in such waters they are not of great practical value.

It is believed the latitudes are generally within 2 miles of the actual position, and in many cases where several observers had determined them independently, the errors may be less than a mile. The longitudes of harbours regularly visited by vessels of the Russian-American Company appear to be fairly determined, except toward the western termination of the Aleutian chain, where large discrepancies, reaching 30′ of arc, are exhibited by the comparison of results between Russian authorities and the United States Exploring Expedition to the North Pacific in 1855. Positions by different authorities are given in some instances to show these discrepancies. The comparison of latitudes and longitudes at Victoria, Fort Simpson, Sitka, Chilkaht, Kadiak, and Unalaska, between English and Russian and the United States coast survey determinations, exhibit larger errors than might have been expected.

The uncertainties that exist in the geographical position of many islands, headlands, straits, and reefs, the great dissimilarity of outline and extent of recent examinations of some of the Western Aleutians, the want of reliable data concerning the tides, currents, and winds, the almost total want of detailed descriptions of headlands, reefs, bays, straits, &c., and the circumstantial testimony of the

Aleutian fishermen concerning islands visited by them and not laid down upon the charts, point to the great necessity for an exhaustive geographical reconnaissance of the coast, as was done for the coast of the United States between Mexico and British Columbia.

Even the latest United States chart of what are now known as the Aleutian Islands (No. 68, published in 1891) is based chiefly on information obtained by the "North Pacific Surveying Expedition" under Rogers, which was carried out in the schooner "Fenimore Cooper" in 1855.

On sheet 1 of this chart (embracing the western part
98 of the Aleutian Islands) such notes as the following are found:

The latest Russian charts place Bouldyr Island 10 miles due south of the position given here, which is from a determination by Sumner's method.

The low islands between Goroloi and Ioulakh, excepting the west point of Unalga, are from Russian authorities, which, however, are widely discrepant.

Similarly, in the corresponding British admiralty chart (No. 1501) published in 1890 we find the remark:

Mostly from old and imperfect British, Russian, and American surveys.

On the chart of Behring Sea, published by the United States in 1891, a small islet is shown north of St. Matthew Island, near the centre of the sea, which does not appear on the special map of St. Matthew Island published in 1875, and which could not be found in 1891.

LIMIT CONTINUED THROUGH ARCTIC OCEAN.

That the line drawn through Behring Sea between Russian and United States possessions was thus intended and regarded merely as a ready and definite mode of indicating which of the numerous islands in a partially explored sea should belong to either Power, is further shown by a consideration of the northern portion of the same line, which is the portion first defined in the Treaty. From the initial point in Behring Strait, which is carefully described, the "limite occidentale" of territories ceded to the United States "remonte en ligne directe, sans limitation, vers le nord, jusqu'à ce qu'elle se perd dans la Mer Glaciale," or in the United States official translation "proceeds due north without limitation into the same Frozen Ocean.

The "geographical limit" in this the northern part of its length runs through an *ocean* which had at no time been surrounded by Russian territory, and which had never been claimed as reserved by Russia in any way; to which, on the contrary, special stipulations for access had been made in connection with the Anglo-Russian Convention of 1825, and which since 1848 or 1849 had been frequented by whalers and walrus-hunters of various nations, while no single fur-seal has ever been found within it. It is therefore very clear that the geographical limit thus pro-
99 jected towards the north could have been intended only to define the ownership of such islands, if any, as might subsequently be discovered in this imperfectly explored ocean; and when, therefore, the Treaty proceeded

to define the course of "*the same western limit*" (*cette limite occidentale*) from the initial point in Behring Strait to the southward and westward across Behring Sea, it is obvious that it continued to possess the same character and value.

DEBATES IN CONGRESS ON THE CESSION OF ALASKA, 1867, 1868.

Neither the debates in Congress—which preceded and resulted in the cession and its ratification by the United States—nor the Treaty by which it was carried into effect, nor the subsequent legislation by the United States, indicate the transfer or acquisition of any exclusive or extraordinary rights in Behring Sea. On the contrary, they show that no such idea was then conceived.

MEMORIAL OF LEGISLATURE OF TERRITORY OF WASHINGTON.

In answer to a Resolution of the House of Representatives of the 19th December, 1867, calling for all correspondence and information in the possession of the Executive in regard to the country proposed to be ceded by the Treaty, the Memorial of the Legislature of Washington Territory (which was made the occasion for the negotiation), together with Mr. Sumner's speech in the Senate, were among other documents transmitted.

This Memorial shows that United States citizens were already engaged in fishing from Cortez Banks to Behring Strait, and that they had never been under any apprehension of interference with such fishing by Russia, but desired to secure coast facilities, especially for the purposes of curing fish and repairing vessels.

The Memorial is as follows:

To his Excellency Andrew Johnson, President of the United States.

United States Senate, Ex. Doc. No. 177, 40th Cong., 2nd Sess., p. 132.

Your memorialists, the Legislative Assembly of Washington Territory, beg leave to show that abundance of codfish, halibut, and salmon, of excellent quality, have been found along the shores of the Russian possessions. Your memorialists respectfully request your excellency to obtain such rights and privileges of the Government
of Russia as will enable our fishing-vessels to visit the ports
100 and harbours of its possessions to the end that fuel, water, and provisions may be easily obtained; that our sick and disabled fishermen may obtain sanitary assistance, together with the privilege of curing fish and repairing vessels in need of repairs. Your memorialists further request that the Treasury Department be instructed to forward to the Collector of Customs of this Puget Sound district such fishing licences, abstract-journals, and log-books as will enable our hardy fishermen to obtain the bounties now provided and paid to the fishermen in the Atlantic States. Your memorialists finally pray your excellency to employ such ships as may be spared from the Pacific naval fleet in exploring and surveying the fishing banks known to navigators to exist along the Pacific Coast from the Cortez bank to Behring Straits.

And, as in duty bound, your memorialists will ever pray.

Passed the House of Representatives, January 10, 1866.

EDWARD ELDRIDGE,
Speaker House of Representatives.

Passed the Council, January 13, 1866.

HARVEY K. HINES,
President of the Council.

DEBATES IN CONGRESS.

In the debate which took place in Congress upon the subject of the acquisition of Alaska, the value of the proposed purchase, and the nature of the interests and property proposed to be acquired were fully discussed.

The debate was protracted, and many leading Members spoke at length. To none of them did it occur to suggest the existence of an exclusive jurisdiction over any waters or fisheries distant more than 3 miles from land.

On the contrary, Mr. Sumner, who had charge of the measure in the Senate, after pointing out that seals were to be found on the "rocks and recesses" of the territory to be acquired, which would therefore make the acquisition more valuable, in touching upon the fisheries and marine animals found at sea, admitted that they were free to the world, contending, however, that the possession of the coast would give advantages to the United States fishermen for the outfitting of their vessels and the curing of their catch.

With reference to the whale fishery he remarked:

The Narwhal with his two long tusks of ivory, out of which was made the famous throne of the early Danish kings, belongs to the Frozen Ocean; but he, too, strays into the straits below. As no sea is now *mare clausum*, all these may be pursued by a ship under any

101 flag, except directly on the coast and within its territorial limit.

And yet it seems as if the possession of this coast as a commercial base must necessarily give to its people peculiar advantages in this pursuit.

United States Senate, Ex. Doc. No. 177, 40th Cong., 2nd Sess., p. 189. See Appendix, vol. I, No. 6.

Mr. Washburn, of Wisconsin, said:

But, sir, there has never been a day since Vitus Behring sighted that coast until the present when the people of all nations have not been allowed to fish there, and to cure fish so far as they can be cured in a country where they have only from forty-five to sixty pleasant days in the whole year. England, whose relations with Russia are far less friendly than ours, has a treaty with that Government by which British subjects are allowed to fish and cure fish on that coast. Nay, more, she has a treaty giving her subjects forever the free navigation of the rivers of Russian America, and making Sitka a free port to the commerce of Great Britain.

United States Congressional Debates, from "Congressional Globe," December 11, 1867, 40th Cong., 2nd Sess., Part I, p. 138.

In 1868 Mr. Ferriss spoke as follows:

That extensive fishing banks exist in these northern seas is quite certain; but what exclusive title do we get to them? They are said to be far out at sea, and now here within 3 marine leagues of the islands or main shore.

United States Congressional Debates, from "Congressional Globe," July 1, 1868, 40th Cong., 2nd Sess., Part IV, p. 3667.

Mr. Peters, in the course of his speech, remarked:

I believe that all the evidence upon the subject proves the proposition of Alaska's worthlessness to be true. Of course, I would not deny that her cod fisheries, if she has them, would be somewhat valuable; but it seems doubtful if fish can find sun enough to be cured on her shores, and if even that is so, my friend from Wisconsin (Mr. Washburn) shows pretty conclusively that in existing treaties we had that right already.

Ibid., p. 3668.

Mr. Williams, in speaking of the value of the fisheries, said:

And now as to the fishes, which may be called, I suppose, the *argumentum piscatorium*. . . . Or is it the larger tenants of the ocean, the more gigantic game, from the whale, and seal, and walrus, down to the halibut and cod, of which it is intended to open the pursuit to the adventurous fishermen of the Atlantic coast, who are there already in a domain that is free to all? My venerable colleague (Mr. Stevens), who discourses as though he were a true brother of the angle himself, finds the foundations of this great Republic like those of Venice and Genoa among the fishermen. Beautiful as it shows above,

United States Congressional Debates, from Appendix to "Congressional Globe," July 9, 1868, 40th Cong., 2nd Sess., Part V, p. 490. See also Alaska, p. 670.

like the fabled mermaid—"*desinit in piscem mulier formosa superne*," it ends, according to him, as does the Alaska argument itself, in nothing but a fish at last. But the resources of the Atlantic are now, he says, exhausted. The Falkland Islands are now only a resting place in our maritime career, and American liberty can no longer live except

102 by giving to its founders a wider range upon a vaster sea.

Think of it, he exclaims—I do not quote his precise language—what a burning shame is it not to us that we have not a spot of earth in all that watery domain, on which to rest a mast or sail, or dry a net or fish?—forgetting, all the while, that we have the range of those seas without the leave of anybody; that the privilege of landing anywhere was just as readily attainable, if wanted, as that of hunting on the territory by the British; and, above all, that according to the official Report of Captain Howard, no fishing bank has been discovered within the Russian latitudes.

It is therefore established—

That Russia's rights "as to jurisdiction and as to the seal fisheries in Behring Sea," referred to in Point 4 of Article VI of the Treaty of 1892, were such only as were hers according to international law, by reason of her right to the possession of the shores of Behring Sea and the islands therein.

That the Treaty of Cession does not purport either expressly or by implication to convey any dominion in the waters of Behring Sea, other than in the territorial waters which would pass according to international law and the practice of nations as appurtenant to any territory conveyed.

That no dominion in the waters of Behring Sea other than in territorial waters thereof did, in fact, pass to the United States by the Treaty of 1867.

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103 CHAPTER VI.

HEAD (F).—*The Action of the United States and Russia from 1867 to 1886.*

When, in consequence of the cession of Alaska as a whole, the Russians relinquished their sovereignty over the Pribiloff (or "Seal") Islands in 1867, sealers at once landed on the breeding resorts of the fur seal on these islands. Those who came from the New England States found themselves confronted by competitors from the Sandwich Islands. They proceeded to slaughter seals upon the breeding grounds in the manner which had usually been practiced by sealers on grounds where no Regulations were in force.

Increased slaughter of seals.

Elliott, Census Report, p. 25. H. R., Ex. Doc. No. 3883, 50th Cong., 2nd Sess., pp. 87, 88. Ibid., p. 70.

In the year 1868, at least 240,000 seals are reported to have been taken, and 87,000 in the following year. In view of this wholesale destruction of seals, the United States Government decided, in the exercise of their undoubted right of territorial sovereignty, to lease these seal rookeries, and to re-establish by means of the necessary legislation, the lapsed Russian Regulations which had restricted the killing of the fur seal.

ACT OF JULY 27, 1868. KILLING OF SEALS PROHIBITED.

Accordingly, on the 27th July, 1868, an Act passed the Congress of the United States, entitled "An act to extend the Laws of the United States relating to Customs and Navigation over the territory ceded to the United States by Russia, to establish a Collection District therein, and for other purposes," of which section 6 provides:

That it shall be unlawful for any person or persons to kill any otter, mink, marten, sable, or fur seal, or other fur-bearing animal within the limits of *said territory, or in the waters thereof.* United States Statutes at Large, vol. xv, p. 241.

On the 3rd of March, 1869, a Resolution was passed by the Senate and House of Representatives specially reserving for Government purposes the Islands of St. Paul and St. George, and forbidding any one to land or remain there without permission of the Secretary of the Treasury. Ibid., p. 348.

SECRETARY BOUTWELL'S REPORT.

Mr. Boutwell's Report, as Secretary of the Treasury, preceded an Act of the 1st July, 1870. This Report discloses no suggestion of jurisdiction at a greater distance than 3 miles from the shore-line. With knowledge of the raids upon the islands and the existence of seal-hunting schooners, Mr. Boutwell dwelt upon the means of protecting the seal islands only. He recommended that the Government of the United States should itself undertake the management of the business of the islands, and should "exclude everybody but its own servants and agents . . . and subject vessels that touch there to forfeiture, except when they are driven to seek shelter or for necessary repairs." 41st Cong., 2nd Sess., Ex. Doc. No. 109.

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ACT OF JULY, 1870.

On the 1st of July, 1870, an Act was passed entitled, "An Act to prevent the extermination of Fur-bearing Animals in Alaska," from which the following are extracts: See Blue Book, United States, No. 2, 1890, p. 12. See Appendix, vol. iii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it shall be unlawful to kill any fur seal upon the islands of St. Paul and St. George, *or in the waters adjacent thereto*, except during the months of June, July, September, and October in each year; and it shall be unlawful to kill such seals at any time by the use of fire-arms, or use other means tending to drive the seals away from said islands. . .

Section 2. And be it further enacted, that it shall be unlawful to kill any female seal, or any seal less than one year old, at any season of the year, except as above provided; and it shall also be unlawful to kill any seal *in the waters adjacent to said islands*, or on the beaches, cliffs, or rocks where they haul up from the sea to remain.

. . . . .

SEAL ISLANDS TO BE LEASED.

Section 4. And be it further enacted, that immediately after the passage of this Act, the Secretary of the Treasury shall lease, for the rental mentioned in section 6 of this Act . . . for a term of twenty years, from the 1st day of May, 1870, the right to engage in the business of taking fur seals on the Islands of St. Paul and St. George, and to send a vessel or vessels to said islands for the skins of such seals.

. . . . .

BEST COPY AVAILABLE

PX 11

AWARD

OF

THE TRIBUNAL OF ARBITRATION

CONSTITUTED

UNDER THE TREATY CONCLUDED AT WASHINGTON,

THE 29TH OF FEBRUARY, 1892,

BETWEEN

THE UNITED STATES OF AMERICA
AND HER MAJESTY THE QUEEN OF THE UNITED KINGDOM
OF GREAT BRITAIN AND IRELAND.

Whereas by a treaty between the United States of America and Great Britain, signed at Washington, February 29, 1892, the ratifications of which by the Governments of the two countries were exchanged at London on May the 7th, 1892, it was, amongst other things, agreed and concluded that the questions which had arisen between the Government of the United States of America and the Government of Her Britannic Majesty, concerning the jurisdictional rights of the United States in the waters of Bering's Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seals in or habitually resorting to the said waters, should be submitted to a Tribunal of Arbitration, to be composed of seven Arbitrators, who should be appointed in the following manner—that is to say: Two should be named by the President of the United States; two should be named by Her Britannic Majesty; His Excellency the President of the French Republic should be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy should be so requested to name one; His Majesty the King of Sweden and Norway should be so requested to name one; the seven Arbitrators to be so named should be jurists of distinguished reputation in their respective countries, and the selecting Powers should be requested to choose, if possible, jurists who are acquainted with the English language;

And whereas it was further agreed by Article II of the said Treaty that the Arbitrators should meet at Paris within twenty days after the

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Vol. 1, Behring Sea Tribunal of Arbitration
Fur Seal Arbitration (1895).

delivery of the Counter-Cases mentioned in Article IV, and should proceed impartially and carefully to examine and decide the questions which had been or should be laid before them as in the said Treaty provided on the part of the Governments of the United States and of Her Britannic Majesty, respectively, and that all questions considered by the Tribunal, including the final decision, should be determined by a majority of all the Arbitrators;

And whereas by Article VI of the said Treaty, it was further provided as follows:

In deciding the matters submitted to the said Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:

1. What exclusive jurisdiction in the sea now known as the Bering's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

3. Was the body of water now known as the Bering's Sea included in the phrase *Pacific Ocean*, as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Bering's Sea were held and exclusively exercised by Russia after said Treaty?

4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Bering's Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th of March, 1867, pass unimpaired to the United States under that Treaty?

5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Bering Sea when such seals are found outside the ordinary three-mile limit?

And whereas, by Article VII of the said Treaty, it was further agreed as follows:

If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Bering Sea, the Arbitrators shall then determine what concurrent Regulations, outside the jurisdictional limits of the respective Governments, are necessary, and over what waters such regulations should extend;

The High Contracting Parties furthermore agree to cooperate in securing the adhesion of other Powers to such Regulations;

And whereas, by Article VIII of the said Treaty, after reciting that the High Contracting Parties had found themselves unable to agree upon a reference which should include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it, and that "they were solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions," the High Contracting Parties agreed that "either of them might submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability

of either Government upon the facts found to be the subject of further negotiation;"

And whereas the President of the United States of America named the Honorable John M. Harlan, Justice of the Supreme Court of the United States, and the Honorable John T. Morgan, Senator of the United States, to be two of the said Arbitrators, and Her Britannic Majesty named the Right Honorable Lord Hannen and the Honorable Sir John Thompson, minister of justice and attorney-general for Canada, to be two of the said Arbitrators, and His Excellency the President of the French Republic named the Baron de Courcel, Senator, Ambassador of France, to be one of the said Arbitrators, and His Majesty the King of Italy named the Marquis Emilio Visconti Venosta, former Minister of Foreign Affairs and Senator of the Kingdom of Italy, to be one of the said Arbitrators, and His Majesty the King of Sweden and Norway named Mr. Gregers Gram, minister of state, to be one of the said Arbitrators;

And whereas We, the said Arbitrators, so named and appointed, having taken upon ourselves the burden of the said Arbitration, and having duly met at Paris, proceeded impartially and carefully to examine and decide all the questions submitted to us, the said Arbitrators, under the said Treaty, or laid before us as provided in the said Treaty on the part of the Governments of Her Britannic Majesty and the United States, respectively;

Now We, the said Arbitrators, having impartially and carefully examined the said questions, do in like manner by this our Award decide and determine the said questions in manner following, that is to say, we decide and determine as to the five points mentioned in Article VI as to which our Award is to embrace a distinct decision upon each of them:

As to the first of the said five points, We, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine as follows:

By the Ukase of 1821 Russia claimed jurisdiction in the sea now known as the Bering's Sea to the extent of 100 Italian miles from the coasts and islands belonging to her, but, in the course of the negotiations which led to the conclusion of the Treaties of 1824 with the United States and of 1825 with great Britain, Russia admitted that her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it appears that from that time up to the time of the cession of Alaska to the United States Russia never asserted in fact or exercised any exclusive jurisdiction in Bering's Sea or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

As to the second of the said five points, We, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis

Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that Great Britain did not recognize or concede any claim, upon the part of Russia, to exclusive jurisdiction as to the seal fisheries in Bering Sea, outside of ordinary territorial waters.

As to the third of the said five points, as to so much thereof as requires us to decide whether the body of water now known as the Bering Sea was included in the phrase "Pacific Ocean" as used in the Treaty of 1825, between Great Britain and Russia, We, the said Arbitrators, do unanimously decide and determine that the body of water now known as the Bering Sea was included in the phrase "Pacific Ocean" as used in the said Treaty.

And as to so much of the said third point as requires us to decide what rights, if any, in the Bering Sea were held and exclusively exercised by Russia after the said Treaty of 1825, We, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that no exclusive rights of jurisdiction in Bering Sea and no exclusive rights as to the seal fisheries therein were held or exercised by Russia outside of ordinary territorial waters after the Treaty of 1825.

As to the fourth of the said five points, We, the said Arbitrators, do unanimously decide and determine that all the rights of Russia as to jurisdiction and as to the seal fisheries in Bering Sea, east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, did pass unimpaired to the United States under the said Treaty.

As to the fifth of the said five points, We, the said Baron de Courcel, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that the United States has not any right of protection or property in the fur seals frequenting the islands of the United States in Bering Sea, when such seals are found outside the ordinary three-mile limit.

And whereas the aforesaid determination of the foregoing questions as to the exclusive jurisdiction of the United States mentioned in Article VI leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Bering Sea, the Tribunal having decided by a majority as to each Article of the following Regulations, We, the said Baron de Courcel, Lord Hannen, Marquis Visconti Venosta, and Mr. Gregers Gram, assenting to the whole of the nine Articles of the following Regulations, and being a majority of the said Arbitrators, do decide and determine, in the mode provided by the Treaty, that the following

concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary and that they should extend over the waters hereinafter mentioned; that is to say:

ARTICLE 1.

The Governments of the United States and of Great Britain shall forbid their citizens and subjects respectively to kill, capture, or pursue, at any time and in any manner whatever, the animals commonly called fur seals, within a zone of sixty miles around the Pribilof Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles of sixty to a degree of latitude.

ARTICLE 2.

The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue, in any manner whatever, during the season extending, each year, from the 1st of May to the 31st of July, both inclusive, the fur seals on the high sea, in the part of the Pacific Ocean, inclusive of the Bering Sea, which is situated to the north of the 35th degree of North latitude, and eastward of the 180th degree of longitude from Greenwich till it strikes the water boundary described in Article 1 of the Treaty of 1867 between the United States and Russia, and following that line up to Bering Straits.

ARTICLE 3.

During the period of time and in the waters in which the fur seal fishing is allowed, only sailing vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

ARTICLE 4.

Each sailing vessel authorized to fish for fur seals must be provided with a special license issued for that purpose by its Government and shall be required to carry a distinguishing flag to be prescribed by its Government.

ARTICLE 5.

The masters of the vessels engaged in fur seal fishing shall enter accurately in their official log book the date and place of each fur seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

ARTICLE 6.

The use of nets, firearms, and explosives shall be forbidden in the fur seal fishing. This restriction shall not apply to shotguns when such fishing takes place outside of Bering's Sea, during the season when it may be lawfully carried on.

ARTICLE 7.

The two Governments shall take measures to control the fitness of the men authorized to engage in fur seal fishing; these men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

ARTICLE 8.

The regulations contained in the preceding articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain and carrying on fur seal fishing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each, in the way hitherto practiced by the Indians, provided such Indians are not in the employment of other persons, and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur seals outside of territorial waters under contract for the delivery of the skins to any person.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Bering Sea or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur sealing vessels as heretofore.

ARTICLE 9.

The concurrent regulations hereby determined with a view to the protection and preservation of the fur seals shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.

The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether, in the light of past experience, there is occasion for any modification thereof.

And whereas the Government of Her Britannic Majesty did submit to the Tribunal of Arbitration by Article VIII of the said Treaty certain questions of fact involved in the claims referred to in the said Article VIII, and did also submit to us, the said Tribunal, a statement of the said facts, as follows, that is to say:

Findings of fact proposed by the Agent of Great Britain and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.

1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, pages 1 to 60, inclusive, were made by the authority of the United States Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States Government to pay the amounts mentioned in the Schedule to the British Case;

2. That the seizures aforesaid, with the exception of the "Pathfinder," seized at Neah-Bay, were made in Bering Sea at the distances from shore mentioned in the Schedule annexed hereto marked "C";

3. That the said several searches and seizures of vessels were made by public armed vessels of the United States the commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto, marked "A", and that the others were, in all substantial respects, the same: that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked "B", and that the libels in the other proceedings were in all substantial respects the same: that the alleged acts or offenses for which said several searches and seizures were made were in each case done or committed in Bering Sea at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States: and in those cases in which the vessels were released the seizure was made by the authority of the United States; that the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Bering Sea at the distances from the shore aforesaid;

4. That the several orders mentioned in the Schedule annexed hereto and marked "C" warning vessels to leave or not to enter Bering Sea were made by public armed vessels of the United States the commanders of which had, at the several times when they were given, like instructions as mentioned in finding 3, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States;

5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pages 1 to 60, inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel.

ANNEX A.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, April 21, 1886.

SIR: Referring to Department letter of this date, directing you to proceed with the revenue steamer *Bear*, under your command, to the seal islands, etc., you are hereby clothed with full power to enforce the law contained in the provisions of Section 1956 of the United States Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the law referred to, after due notice shall have been given.

You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes and the Proclamation of the President dated 4th February, 1870.

Respectfully yours,
(Signed) C. S. FAIRCHILD,
Acting Secretary.

Capt. M. A. HEALY,
Commanding Revenue Steamer Bear, San Francisco, California.

ANNEX B.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

AUGUST SPECIAL TERM, 1886.

To the Honorable Lafayette Dawson, Judge of said District Court:

The libel information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner *Thornton*, her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

That Charles A. Abbey, an officer in the Revenue-Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the first day of August, 1886, within the limits of Alaska Territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Bering Sea belonging to the said district on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel commonly called a schooner, the *Thornton*, her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:

That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular the premises are and were true, and within the Admiralty and maritime jurisdiction of this Court, and that by reason thereof, and by force of the statutes of the United States in such cases made and provided, the aforementioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefore the said Attorney prays the usual process and monition of this honorable Court issue in this behalf, and that all persons interested in the before-

mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture may, for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree of this honorable Court, as forfeited to the use of the said United States, according to the form of the statute of the said United States in such cases made and provided.

(Signed) M. D. BALL,
United States District Attorney for the District of Alaska.

ANNEX C.

The following table shows the names of the British sealing vessels seized or warned by United States revenue cruisers, 1886-1890, and the approximate distance from land when seized. The ... ...es assigned in the cases of the *Carolena*, *Thornton*, and *Onward* are on the authority of United States Naval Commander Abbey. (See Fiftieth Congress, second session, Senate Executive Document No. 106, pp. 20, 30, 40.) The distances assigned in the cases of the *Anna Beck*, *W. P. Sayward*, *Dolphin*, and *Grace* are on the authority of Captain Shepard, U. S. R. M. (*Blue Book*, United States, No. 2, 1890, pp. 80-82. See Appendix, Vol. III):

Name of vessel.	Date of seizure.	Approximate distance from land when seized.	United States vessel making seizure.
Carolena	Aug. 1, 1886	75 miles	Corwin.
Thornton	Aug. 1, 1886	70 miles	Corwin.
Onward	Aug. 2, 1886	115 miles	Corwin.
Favourite	Aug. 2, 1886	Warned by Corwin in about same position as Onward.	
Anna Beck	July 2, 1887	66 miles	Rush.
W. P. Sayward	July 9, 1887	59 miles	Rush.
Dolphin	July 12, 1887	40 miles	Rush.
Grace	July 17, 1887	96 miles	Rush.
Alfred Adams	Aug. 10, 1887	62 miles	Rush.
Ada	Aug. 25, 1887	15 miles	Bear.
Triumph	Aug. 4, 1887	Warned by Rush not to enter Bering Sea.	
Juanita	July 31, 1889	66 miles	Rush.
Pathfinder	July 29, 1889	50 miles	Rush.
Triumph	July 11, 1889	Ordered out of Bering Sea by Rush. (1) As to position when warned.	
Black Diamond	July 11, 1889	35 miles	Rush.
Lily	Aug. 6, 1889	66 miles	Rush.
Ariel	July 30, 1889	Ordered out of Bering Sea by Rush.	
Kate	Aug. 13, 1889	.... Ditto.	
Minnie	July 15, 1889	65 miles	Rush.
Pathfinder	Mar. 27, 1890	Seized in Neah Bay (1)	Corwin.

(1) Neah Bay is in the State of Washington, and the *Pathfinder* was seized there on charges made against her in the Bering Sea in the previous year. She was released two days later.

And whereas the Government of Her Britannic Majesty did ask the said Arbitrators to find the said facts as set forth in the said statement, and whereas the Agent and Counsel for the United States Government thereupon in our presence informed us that the said statement of facts was sustained by the evidence, and that they had agreed with the Agent and Counsel for Her Britannic Majesty that We, the Arbitrators, if we should think fit so to do, might find the said statement of facts to be true.

Now, We, the said Arbitrators, do unanimously find the facts as set forth in the said statement to be true.

And whereas each and every question which has been considered by the Tribunal has been determined by a majority of all the Arbitrators;

Now, We, Baron de Courcel, Lord Hannen, Mr. Justice Harlan, Sir John Thompson, Senator Morgan, the Marquis Visconti Venosta, and Mr. Gregers Gram, the respective minorities not withdrawing their votes, do declare this to be the final Decision and Award in writing of this Tribunal in accordance with the Treaty.

Made in duplicate at Paris and signed by us the fifteenth day of August, in the year 1893.

And We do certify this English Version thereof to be true and accurate.

ALPH. DE COURCEL.
JOHN M. HARLAN.
JOHN T. MORGAN.
HANNEN.
JNO. S. D. THOMPSON.
VISCONTI VENOSTA.
G. GRAM.

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Statement of Mr. Peirce, the delegate for the United States during the arbitration of the whaling and sealing claim of the United States against Russia held at The Hague in 1902, made on July 4, 1902 (Foreign Relations of the United States 1902, Appendix I, 440).

> In the first session the arbitrator asked me, "What is the extent of jurisdiction which the United States claim today in Bering Sea?" and I replied that the American Government now claims an extent of 3 miles. I wished that this reply might be sustained by the Secretary of State, Mr. John Hay. I am now in receipt of a dispatch, and in accordance with the authority which I have received from the Secretary of State of the United States, dated July 3, 1902, I repeat that the Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claims to jurisdiction upon the following principle: The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league, unless a different rule is fixed by treaty between two States; even then the treaty States alone are affected by the agreement.

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List 62.

(VIII Aleutian Island, Alaska)

Executive Order

WHEREAS it has become apparent that certain valuable fisheries of Alaska have been seriously impaired and are in danger of further depletion, and that it is necessary to establish authority to meet the exigency which has arisen for the protection of these fisheries, and

WHEREAS by Executive Order issued under date of March 3, 1913, modified by an order of August 11, 1916, a reservation known as the Aleutian Islands Reservation was created, and by an Executive Order under date of February 17, 1922, a reservation known as the Alaska Peninsula Fisheries Reservation was created, including therein the lands and the territorial waters of the United States contiguous to the lands covered by said Executive Orders,

NOW, THEREFORE, I, WARREN G. HARDING, President of the United States of America, by virtue of the power in me vested by the laws of the United States, do hereby set apart as a preserve to more effectively insure the protection of the fisheries and for their encouragement and development, in addition to the above reservations, a reserve of lands and waters, which said reservation shall be known as the Southwestern Alaska Fisheries Reservation, which shall include all territorial waters, and the lands within one-half mile of the shores thereof, within the lines defined as follows:

From the northeasterly point of the Alaska Peninsula Fisheries Reservation at Cape Menshikof, Bristol Bay, northwesterly to a point in latitude 58° 32′ north, longitude 162° 12′ west, off Cape Newenham; thence to a point in latitude 59° 15′ north, longitude 162° 0′ west; thence eastward along parallel of latitude 59° 15′ north, to longitude 155° west; thence to a point in latitude 61° 20′ north, longitude 151° 20′ west; thence to a point in latitude 61° 20′ north, longitude 150° 10′ west; thence to a point in latitude 61° 35′ north, longitude 149° 40′ west; thence to a point in latitude 61° 35′ north, longitude 149° 0′ west; thence to a point in latitude 60° 40′ north, longitude 149° 0′ west; thence to a point in latitude 60° 40′ north, longitude 151° 0′ west; thence to a point in latitude 57° 30′ north, longitude 151° west; thence to a point in latitude 55° 0′ north, longitude 157° 0′ west; thence to low water mark at the eastern extremity of Foggy Cape on Sutwik Island; thence to point of beginning.

Fishery operations within the said Southwestern Alaska Fisheries Reservation shall be subject to such regulations and restrictions as shall be issued by the Secretary of Commerce, in addition to the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

The reservation hereby established shall not interfere with the use of the waters, islands, or other lands embraced therein for any purpose not inconsistent therewith, nor with the operation therein of the laws now or hereafter applicable to the public lands in Alaska, nor with the respective jurisdictions of the Secretary of Agriculture and the Secretary of the Interior thereover.

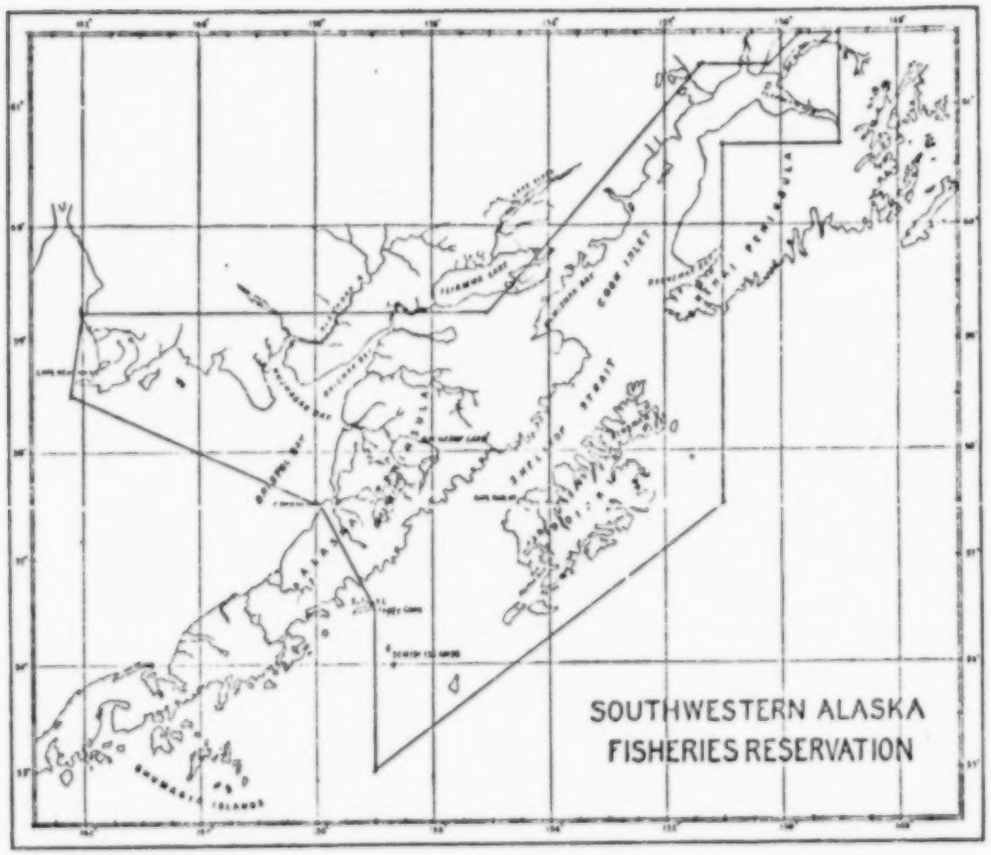
Warning is hereby expressly given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned.

WARREN G HARDING

THE WHITE HOUSE,
November 3, 1923.

[No. 3752.]

(This order revoked by 4021, 4029 revokes 3630a, 4076 partially revokes 1733 & 4251 revokes 1733, 5000 revokes 1733 & 1733 is amended by 5057)



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REGULATIONS FOR THE ADMINISTRATION OF THE SOUTHWESTERN ALASKA FISHERIES RESERVATION.

Under date of November 3, 1922, the following Executive order was promulgated:

Whereas it has become apparent that certain valuable fisheries of Alaska have been seriously impaired and are in danger of further depletion, and that it is necessary to establish authority to meet the exigency which has arisen for the protection of these fisheries, and

Whereas by Executive order issued under date of March 3, 1913, modified by an order of August 11, 1916, a reservation known as the Aleutian Islands Reservation was created, and by an Executive order under date of February 17, 1922, a reservation known as the Alaska Peninsula Fisheries Reservation was created, including therein the lands and the territorial waters of the United States contiguous to the lands covered by said Executive orders,

Now, therefore, I, Warren G. Harding, President of the United States of America, by virtue of the power in me vested by the laws of the United States, do hereby set apart as a preserve to more effectively insure the protection of the fisheries and for their encouragement and development, in addition to the above reservations, a reserve of lands and waters, which said reservation shall be known as the Southwestern Alaska Fisheries Reservation, which shall include all territorial waters, and the lands within one-half mile of the shores thereof, within the lines defined as follows:

From the northeasterly point of the Alaska Peninsula Fisheries Reservation at Cape Menshikof, Bristol Bay, northwesterly to a point in latitude 58° 32′ north, longitude 162° 12′ west, off Cape Newenham; thence to a point in latitude 59° 15′ north, longitude 162° 0′ west; thence eastward along parallel of latitude 59° 15′ north, to longitude 155° west; thence to a point in latitude 61° 20′ north, longitude 151° 20′ west; thence to a point in latitude 61° 20′ north, longitude 150° 10′ west; thence to a point in latitude 61° 35′ north, longitude 149° 40′ west; thence to a point in latitude 61° 35′ north, longitude 147° 0′ west; thence to a point in latitude 60° 40′ north, longitude 147° 0′ west; thence to a point in latitude 60° 40′ north, longitude 151° 0′ west; thence to a point in latitude 57° 30′ north, longitude 151° west; thence to a point in latitude 57° 0′ north, longitude 157° 0′ west; thence to low-water mark at the eastern extremity of Foggy Cape on Sutwik Island; thence to point of beginning.

Fishery operations within the said Southwestern Alaska Fisheries Reservation shall be subject to such regulations and restrictions as shall be issued by the Secretary of Commerce, in addition to the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

The reservation hereby established shall not interfere with the use of the waters, islands, or other lands embraced therein for any purpose not inconsistent therewith, nor with the operation therein of the laws now or hereafter applicable to the public lands in Alaska, nor with the respective jurisdictions of the Secretary of Agriculture and the Secretary of the Interior thereover.

Warning is hereby expressly given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned.

By virtue of the authority conferred by the above order, the following regulations were promulgated under date of December 16, 1922:

1. For purposes of administration the following districts and zones are established.

(a) *Bristol Bay district.*—All that portion of the reservation lying within the Bering Sea, the coast line extending from Cape Menshikof to Cape Newenham and thence northward to 59° 15′ north latitude.

Zone 1. Including all the Ugashik fishing grounds which lie northerly and westerly from Cape Menshikof and are included between the boundary of the reservation and the fifty-eighth parallel of north latitude east of the one hundred fifty-ninth meridian.

Zone 2. All that portion of Bristol Bay north of the fifty-eighth parallel of north latitude and east of the one hundred fifty-ninth meridian; including the Egegik, Naknek, Kvichak, and Nushagak fishing areas.

Zone 3. All waters of the Bering Sea included in the reservation, but not included in zones 1 and 2.

(b) *Cook Inlet district.*—Embracing all that portion of the reservation east of Bristol Bay and north of the latitude of Cape Douglas (approximately 58° 50′); including the Barren Islands, the shores and outlying islands of the Kenai Peninsula, and all the shores and waters of Cook Inlet.

(c) *Kodiak-Afognak district.*—All that portion of the reservation south and east of the Alaska Peninsula and south of the latitude of Cape Douglas, including the Kodiak-Afognak group of islands, the Trinity and the Semidi groups, Chirikof Island, Shelikof Strait, and all the mainland shores from Cape Douglas to the southwestern boundary of the reservation.

Zone 1. Extends on Kodiak Island from Low Cape to Cape Ugat, and on the mainland coast from the latitude of Cape Ugat to the western limit of the reservation. Includes Red and Karluk Rivers and Uyak Bay.

Zone 2. Extends from Low Cape on the western coast of Kodiak Island to, but not including, Three Saints Bay on the southeastern coast, and includes Alitak and Olga Bays, and Chirikof, Trinity, and Semidi Islands.

Zone 3. Embraces all that portion of the district not included in zones 1 and 2. Includes the western shores of Kodiak and Afognak Islands north of the latitude of Cape Ugat and the northern and eastern shores as far south as Three Saints Bay. It also includes Shelikof Strait and the mainland shores north of the latitude of Cape Ugat.

Regulations of the Department of Commerce promulgated under date of December 16, 1922, pursuant to Executive Order No. 3752, Establishing the Southwestern Alaska Fisheries Reservation, November 3, 1922, Department of Commerce Circular No. 251 (9th ed., January 9, 1923) p. 8.

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2. No individual shall engage in the business of catching, canning, or preparing salmon, except for personal or family use and not for sale or barter, within the above-stated districts without first securing a permit from the Secretary of Commerce. Applications for annual permits shall be made on or before January 15, 1923, and on or before December 15 of each year thereafter, to the Secretary of Commerce, Washington, D. C., and shall give full information on the following points:

(a) Name and permanent address of person or corporation desiring permit.

(b) Character of business proposed, whether fishing, canning, salting, or otherwise curing fish.

(c) Location and capacity of plant (number of lines of machinery in cannery and whether for pound or half-pound cans).

(d) Number and kind of each class of fishing gear desired, and location where same is to be operated.

(e) Number of cases of salmon to be packed (based upon 48 one-pound cans per case), or number of barrels of salmon to be salted, or tierces of salmon to be mild cured.

(f) If application is for continuance of operations formerly conducted, the catch and pack of salmon by species and the amount of each class of gear operated in the next preceding season must be shown.

(g) Affidavit as to correctness of facts set forth in the application must be made by competent authority.

3. Permits shall specify the amount of pack allowed, if that be limited, and the character, extent, and locality of fishing operations to be conducted.

4. The use of purse seines in fishing for salmon will not be permitted within the reservation.

5. Fox farmers may take and prepare salmon for fox feed in all legal ways, but must secure permits from the Secretary of Commerce.

6. Transportation of fresh salmon for canning, salting, or otherwise preserving will not be permitted between any two districts or zones within the reservation, or between any district or zone within the reservation and any outside district.

7. Throughout the Cook Inlet and the Kodiak-Afognak districts the pack of each plant shall be made exclusively from the proceeds of the fishing gear specifically allotted to it. Transfer of salmon from one plant to another will not be permitted.

8. Nothing in these regulations shall prevent the purchase of salmon from natives, local inhabitants, or other individuals who have secured permits to fish within areas properly tributary to the cannery, but fish so purchased shall not be in excess of the pack limit which may be allotted.

9. No fishing for salmon shall be permitted in Chinik Inlet, Kamishak Bay, within a line which joins the outer headlands of the inlet and passes outside the two small islands which lie near its entrance. Markers shall be placed on the headlands to designate the closed areas.

10. In the Bristol Bay district the following regulations shall be in effect.

(a) In zone 2 it is permitted that fishing boats discharge their catch wherever convenient, but lighters or other collecting boats shall not transport salmon from the Nushagak fishing grounds to the canneries along the east shore, nor from the Egegik-Naknek-Kvichak fishing grounds to the Nushagak canneries. For the purposes of this regulation the fishing grounds off Cape Etolin shall be considered as belonging to the Nushagak River.

(b) Fishing for salmon for commercial purposes shall be conducted solely by the use of drift gill nets, except that traps operated in the season of 1922 in the Nushagak region may continue to operate during the season of 1923. In 1924 and in subsequent years no traps shall be driven or operated in the Bristol Bay district.

(c) King salmon nets shall have a mesh not less than 8½ inches knit measure, and red salmon nets, after the season of 1923, a mesh not less than 5½ inches stretched measure between knots. For the season of 1923 only, red salmon nets will be permitted with mesh as small as 5¼ inches, measured as above.

(d) Companies operating motor gill-net fishing boats during the season of 1922 may continue their use in 1923, but the use of motor fishing boats will not be permitted in the Bristol Bay district after the season of 1923.

(e) Each fishing boat may be provided with gill nets not to exceed in length 200 fathoms hung measure.

(f) Fishing for red salmon shall not begin prior to midnight of June 25 and shall close at or before midnight of July 25 of each year; but each cannery may operate one commissary net at any time to supply fresh salmon for the mess. Salmon traps shall not be operated prior to midnight of June 25.

(g) Fishing for king salmon with drift gill nets having a mesh not less than 8½ inches knit measure is permitted prior to June 26, as well as after that date; but the total length of gill nets employed by any fishing boat at one time shall not exceed 200 fathoms.

11. These regulations shall be subject to such annual revision by the Secretary of Commerce as may appear advisable in view of the investigation and the experience of the preceding season. They shall be in full force and effect immediately from and after date of issue.

HERBERT HOOVER,
Secretary of Commerce.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1923

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PX 23

LAWS AND REGULATIONS FOR PROTECTION OF FISHERIES OF ALASKA

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

DEPARTMENT CIRCULAR NO. 251
TENTH EDITION[1]

BUREAU OF FISHERIES
ALASKA FISHERIES SERVICE

June 21, 1924.

TO WHOM IT MAY CONCERN:

Attention is directed to the following acts for the protection and regulation of the fisheries of Alaska, approved June 14, 1906, June 26, 1906, and June 6, 1924, together with the fisheries regulations and orders of the Department which are now effective. Persons engaged in the Alaska fisheries and officers of the Department charged with the supervision of the fisheries of Alaska should familiarize themselves with their provisions.

AN ACT FOR THE PROTECTION OF THE FISHERIES OF ALASKA, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of protecting and conserving the fisheries of the United States in all waters of Alaska the Secretary of Commerce from time to time may set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction, and within such areas may establish closed seasons during which fishing may be limited or prohibited as he may prescribe. Under this authority to limit fishing in any area so set apart and reserved the Secretary may (a) fix the size and character of nets, boats, traps, or other gear and appliances to be used therein; (b) limit the catch of fish to be taken from any area; (c) make such regulations as to time, means, methods, and extent of fishing as he may deem advisable. From and after the creation of any such fishing area and during the time fishing is prohibited therein it shall be unlawful to fish therein or to operate therein any boat, seine, trap, or other gear or apparatus for the purpose of taking fish; and from and after the creation of any such fishing area in which limited fishing is permitted such fishing shall be carried on only during the time, in the manner, to the extent, and in conformity with such rules and regulations as the Secretary prescribes under the authority herein given: *Provided*, That every such regulation made by the Secretary of Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of Commerce. The right herein given to establish fishing areas and to permit limited fishing therein shall not apply to any creek, stream, river, or other bodies of water in which fishing is prohibited by specific provisions of this Act, but the Secretary of Commerce through the creation of such areas and the establishment of closed seasons may further extend the restrictions and limitations imposed upon fishing by specific provisions of this or any other Act of Congress.

It shall be unlawful to import or bring into the Territory of Alaska, for purposes other than personal use and not for sale or barter, salmon from waters outside the jurisdiction of the United States taken during any closed period provided for by this Act or regulations made thereunder.

SEC. 2. In all creeks, streams, or rivers, or in any other bodies of water in Alaska, over which the United States has jurisdiction, in which salmon run, and in which now or hereafter there exist racks, gateways, or other means by which the number in a run may be counted or estimated with substantial accuracy, there shall be allowed an escapement of not less than 50 per centum of the total number thereof. In such waters the taking of more than 50 per centum of the run of such fish is hereby prohibited. It is hereby declared to be the intent and policy of Congress that in all waters of Alaska in which salmon run there shall be an escapement of not less than 50 per centum thereof, and if in any year it shall appear to the Secretary of Commerce that the run of fish in any waters has diminished, or is diminishing, there shall be required a correspondingly increased escapement of fish therefrom.

[1] The tenth edition of this circular supersedes all previous editions.

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SEC. 3. Section 3 of the Act of Congress entitled "An Act for the protection and regulation of the fisheries of Alaska," approved June 26, 1906, is amended to read as follows:

"SEC. 3. That it shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than one thousand feet, or within five hundred yards of the mouth of any creek, stream, or river into which salmon run, excepting the Karluk and Ugashik Rivers, with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds, and the Secretary of Commerce is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed. For the purposes of this section, the mouth of such creek, stream, or river shall be taken to be the point determined as such mouth by the Secretary of Commerce and marked in accordance with this determination. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive or to construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance."

SEC. 4. Section 4 of said Act of Congress approved June 26, 1906, is amended to read as follows:

"SEC. 4. That it shall be unlawful to fish for, take, or kill any salmon of any species or by any means except by hand rod, spear, or gaff in any of the creeks, streams, or rivers of Alaska; or within five hundred yards of the mouth of any such creek, stream, or river over which the United States has jurisdiction, excepting the Karluk and Ugashik Rivers: *Provided*, That nothing contained herein shall prevent the taking of fish for local food requirements or for use as dog feed."

SEC. 5. Section 5 of said Act of Congress approved June 26, 1906, is amended to read as follows:

"SEC. 5. That it shall be unlawful to fish for, take, or kill any salmon of any species in any manner or by any means except by hand rod, spear, or gaff for personal use and not for sale or barter in any of the waters of Alaska over which the United States has jurisdiction from six o'clock postmeridian of Saturday of each week until six o'clock antemeridian of the Monday following, or during such further closed time as may be declared by authority now or hereafter conferred, but such authority shall not be exercised to prohibit the taking of fish for local food requirements or for use as dog feed. Whenever the Secretary of Commerce shall find that conditions in any fishing area make such action advisable, he may advance twelve hours both the opening and ending time of the minimum thirty-six-hour closed period herein stipulated. Throughout the weekly closed season herein prescribed the gate, mouth, or tunnel of all stationary and floating traps shall be closed, and twenty-five feet of the webbing or net of the 'heart' of such traps on each side next to the 'pot' shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes."

SEC. 6. Any person, company, corporation, or association violating any provision of this Act or of said Act of Congress approved June 26, 1906, or of any regulation made under the authority of either, shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or imprisonment for a term of not more than ninety days in the county jail, or by both such fine and imprisonment; and in case of the violation of section 3 of said Act approved June 26, 1906, as amended, there may be imposed a further fine not exceeding $250 for each day the obstruction therein declared unlawful is maintained. Every boat, seine, net, trap, and every other gear and appliance used or employed in violation of this Act or in violation of said Act approved June 26, 1906, and all fish taken therein or therewith, shall be forfeited to the United States, and shall be seized and sold under the direction of the court in which the forfeiture is declared, at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of as other fines and forfeitures under the laws relating to Alaska. Proceedings for such forfeiture shall be in rem under the rules of admiralty.

That for the purposes of this Act all employees of the Bureau of Fisheries, designated by the Commissioner of Fisheries, shall be considered as peace officers and shall have the same powers of arrest of persons and seizure of property for any violation of this Act as have United States marshals or their deputies.

SEC. 7. Sections 6 and 13 of said Act of Congress approved June 26, 1906, are hereby repealed. Such repeal, however, shall not affect any act done or any right accrued or any suit or proceeding had or commenced in any civil cause prior to said repeal, but all liabilities under said laws shall continue and may be enforced in the same manner as if committed, and all penalties, forfeitures, or liabilities incurred prior to taking effect hereof, under any law embraced in, changed, modified, or repealed by this Act, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed.

SEC. 8. Nothing in this Act contained, nor any powers herein conferred upon the Secretary of Commerce, shall abrogate or curtail the powers granted the Territorial Legislature of Alaska to impose taxes or licenses, nor limit or curtail any powers granted the Territorial Legislature of Alaska by the Act of Congress approved August 24, 1912, "To create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes."

Approved, June 6, 1924.

The following sections of an act for the protection and regulation of the fisheries of Alaska, approved June 26, 1906, are still in effect.

AN ACT FOR THE PROTECTION AND REGULATION OF THE FISHERIES OF ALASKA[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person, company, or corporation carrying on the business of canning, curing, or preserving fish or manufacturing fish products within the territory known as Alaska, ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, or in any of the waters of Alaska over which the United States has jurisdiction, shall, in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows: Canned salmon, four cents per case; pickled salmon, ten cents per barrel; salt salmon in bulk, five cents per one hundred pounds; fish oil, ten cents per barrel; fertilizer, twenty cents per ton. The payment and collection of such license taxes shall be under and in accordance with the provisions of the Act of March third, eighteen hundred and ninety-nine, entitled "An Act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," and amendments thereto.

SEC. 2. That the catch and pack of salmon made in Alaska by the owners of private salmon hatcheries operated in Alaska shall be exempt from all license fees and taxation of every nature at the rate of ten cases of canned salmon to every one thousand red or king salmon fry liberated, upon the following conditions:

That the Secretary of Commerce may from time to time, and on the application of the hatchery owner shall, within a reasonable time thereafter, cause such private hatcheries to be inspected for the purpose of determining the character of their operations, efficiency, and productiveness, and if he approve the same shall cause notice of such approval to be filed in the office of the clerk or deputy clerk of the United States district court of the division of the district of Alaska wherein any such hatchery is located, and shall also notify the owners of such hatchery of the action taken by him. The owner, agent, officer, or superintendent of any hatchery the effectiveness and productiveness of which has been approved as above provided shall, between the thirtieth day of June and the thirty-first day of December of each year, make proof of the number of salmon fry liberated during the twelve months immediately preceding the thirtieth day of June, by a written statement under oath. Such proof shall be filed in the office of the clerk or deputy clerk of the United States district court of the division of the district of Alaska wherein such hatchery is located, and when so filed shall entitle the respective hatchery owners to the exemption as herein provided; and a false oath as to the number of salmon fry liberated shall be deemed perjury and subject the offender to all the pains and penalties thereof. Duplicates of such statements shall also be filed with the Secretary of Commerce. It shall be the duty of such clerk or deputy clerk in whose office the approval and proof heretofore provided for are filed to forthwith issue to the hatchery owner, causing such proofs to be filed, certificates which shall not be transferable and of such denominations as said owner may request (no certificate to cover fewer than one thousand fry), covering in the aggregate the number of fry so proved to have been liberated; and such certificates may be used at any time by the person, company, corporation, or association to whom issued for the payment pro tanto of any license fees or taxes upon or against or on account of any catch or pack of salmon made by them in Alaska; and it shall be the duty of all public officials charged with the duty of collecting or receiving such license fees or taxes to accept such certificates in lieu of money in payment of all license fees or taxes upon or against the pack of canned salmon at the ratio of one thousand fry for each ten cases of salmon. No hatchery owner shall obtain the rebates from the output of any hatchery to which he might otherwise be entitled under this Act unless the efficiency of said hatchery has first been approved by the Secretary of Commerce in the manner herein provided for.

* * * * * * * * *

SEC. 7. That it shall be unlawful to can or salt for sale for food any salmon more than forty-eight hours after it has been killed.

SEC. 8. That it shall be unlawful for any person, company, or corporation wantonly to waste or destroy salmon or other food fishes taken or caught in any of the waters of Alaska.

SEC. 9. That it shall be unlawful for any person, company, or corporation canning, salting, or curing fish of any species in Alaska to use any label, brand, or trade-mark which shall tend to misrepresent the contents of any package of fish offered for sale: *Provided*, That the use of the terms "red," "medium red," "pink," "chum," and so forth, as applied to the various species of Pacific salmon under present trade usages shall not be deemed in conflict with the provisions of this Act when used to designate salmon of those known species.

[1] "Department of Commerce and Labor" and "Secretary of Commerce and Labor," wherever they occur in this act, have been changed, respectively, to "Department of Commerce" and "Secretary of Commerce," in accordance with the act of Mar. 6, 1913, creating the Department of Labor

SEC. 10. That every person, company, and corporation engaged in catching, curing, or in any manner utilizing fishery products, or in operating fish hatcheries in Alaska, shall make detailed annual reports thereof to the Secretary of Commerce, on blanks furnished by him, covering all such facts as may be required with respect thereto for the information of the Department. Such reports shall be sworn to by the superintendent, manager, or other person having knowledge of the facts, a separate blank form being used for each establishment in cases where more than one cannery, saltery, or other establishment is conducted by a person, company, or corporation, and the same shall be forwarded to the Department at the close of the fishing season and not later than December fifteenth of each year.

SEC. 11. That the catching or killing, except with rod, spear, or gaff, of any fish of any kind or species whatsoever in any of the waters of Alaska over which the United States has jurisdiction, shall be subject to the provisions of this Act, and the Secretary of Commerce is hereby authorized to make and establish such rules and regulations not inconsistent with law as may be necessary to carry into effect the provisions of this Act.

SEC. 12. That to enforce the provisions of this Act and such regulations as he may establish in pursuance thereof, the Secretary of Commerce is authorized and directed to depute, in addition to the agent and assistant agent of salmon fisheries now provided by law, from the officers and employees of the Department of Commerce, a force adequate to the performance of all work required for the proper investigation, inspection, and regulation of the Alaskan fisheries and hatcheries, and he shall annually submit to Congress estimates to cover the cost of the establishment and maintenance of fish hatcheries in Alaska, the salaries and actual traveling expenses of such officials, and for such other expenditures as may be necessary to carry out the provisions of this Act.

* * * * * * * * *

SEC. 14. That the violation of any provision of this Act may be prosecuted in any district court of Alaska or any district court of the United States in the States of California, Oregon, or Washington. And it shall be the duty of the Secretary of Commerce to enforce the provisions of this Act and the rules and regulations made thereunder. And it shall be the duty of the district attorney to whom any violation is reported by any agent or representative of the Department of Commerce to institute proceedings necessary to carry out the provisions of this Act.

SEC. 15. That all Acts or parts of Acts inconsistent with the provisions of this Act are, so far as inconsistent, hereby repealed.

SEC. 16. That this Act shall take effect and be in force from and after its passage.

Approved, June 26, 1906.

AN ACT TO PROHIBIT ALIENS FROM FISHING IN THE WATERS OF ALASKA[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person not a citizen of the United States, or who has declared his intention to become a citizen of the United States, and is not a bona fide resident therein, or for any company, corporation, or association not organized or authorized to transact business under the laws of the United States or under the laws of any State, Territory, or district thereof, or for any person not a native of Alaska, to catch or kill, or attempt to catch or kill, except with rod, spear, or gaff, any fish of any kind or species whatsoever in any of the waters of Alaska under the jurisdiction of the United States: *Provided, however,* That nothing contained in this Act shall prevent those lawfully taking fish in the said waters from selling the same, fresh or cured, in Alaska or in Alaskan waters, to any alien person, company, or vessel then being lawfully in said waters: *And provided further,* That nothing contained in this Act shall prevent any person, firm, corporation, or association lawfully entitled to fish in the waters of Alaska from employing as laborers any aliens who can now be lawfully employed under the existing laws of the United States, either at stated wages or by piecework, or both, in connection with Alaskan fisheries, or with the canning, salting or otherwise preserving of fish.

SEC. 2. That every person, company, corporation, or association found guilty of a violation of any provision of this Act or of any regulation made thereunder shall, for each offense, be fined not less than one hundred dollars nor more than five hundred dollars, which fine shall be a lien against any vessel or other property of the offending party or which was used in the commission of such unlawful act. Every vessel used or employed in violation of any provision of this Act or of any regulation made thereunder shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, and may be seized and proceeded against by way of libel in any court having jurisdiction of the offense.

[1] "Department of Commerce and Labor" and "Secretary of Commerce and Labor," wherever they occur in this act, have been changed, respectively, to "Department of Commerce" and "Secretary of Commerce," in accordance with the act of Mar. 6, 1913, creating the Department of Labor.

SEC. 3. That the violation of any provision of this Act or of any regulation made thereunder may be prosecuted in any United States district court of Alaska, California, Oregon, or Washington.

SEC. 4. That the collector of customs of the district of Alaska is hereby authorized to search and seize every foreign vessel and arrest every person violating any provision of this Act or any regulation made thereunder, and the Secretary of Commerce shall have power to authorize officers of the Navy and of the Revenue Cutter Service and agents of the Department of Commerce to likewise make such searches, seizures, and arrests. If any foreign vessel shall be found within the waters to which this Act applies, having on board fresh or cured fish and apparatus or implements suitable for killing or taking fish, it shall be presumed that the vessel and apparatus were used in violation of this Act until it is otherwise sufficiently proved. And every vessel, its tackle, apparatus, or implements so seized shall be given into the custody of the United States marshal of either of the districts mentioned in section three of this Act, and shall be held by him subject to the proceedings provided for in section two of this Act. The facts in connection with such seizures shall be at once reported to the United States district attorney for the district to which the vessel so seized shall be taken, whose duty it shall be to institute the proper proceedings.

SEC. 5. That the Secretary of Commerce shall have power to make rules and regulations not inconsistent with law to carry into effect the provisions of this Act. And it shall be the duty of the Secretary of Commerce to enforce the provisions of this Act and the rules and regulations made thereunder, and for that purpose he may employ, through the Secretary of the Treasury and the Secretary of the Navy, the vessels of the United States Revenue-Cutter Service and of the Navy: *Provided, however*, That nothing contained in this Act shall be construed as affecting any existing treaty or convention between the United States and any foreign power.

Approved, June 14, 1906.

YES BAY RESERVATION

An Executive order of February 1, 1906, is as follows:

It is hereby ordered that the hereinafter described land and water areas in the District of Alaska be, and they are hereby, reserved and set apart as a site for a salmon hatchery, subject to the possessory rights of the natives and of persons claiming title through the Russian Government, also subject to the rights of natives to take fish from the waters and fuel from the forests included in the limits of the reservation hereby established to wit:

Yes Lake (otherwise known as Lake McDonald) and its catchment basin, its outlet, and a strip of land one-eighth of a mile wide along each shore thereof; Yes Bay, Back Bay, and a strip of land one-eighth of a mile wide along the shores thereof and a strip of land one-eighth of a mile wide on each side of the old Indian trail.

ANNETTE ISLAND FISHERY RESERVE

Section 15 of the act of March 3, 1891, is as follows:

That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in Southeastern Alaska, on the north side of Dixon's Entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakatla Indians, and those people known as Metlakatlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

On April 28, 1916, the President issued a proclamation creating the Annette Island Fishery Reserve. The proclamation provides that—

The waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, * * * also the bays of said islands, rocks, and islets, are hereby reserved for the benefit of the Metlakatlans and such other Alaskan natives as have joined them or may join them in residence on these islands, to be used by them under the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

AFOGNAK RESERVATION

A proclamation by the President of the United States, promulgated December 24, 1892, created the Afognak Forest and Fish Culture Reserve, which is now a part of the Chugach National Forest. The proclamation states that—

There is hereby reserved from occupation and sale, and set apart as a public reservation, including use for fish-culture stations, said Afognak Island, Alaska, and its adjacent bays and rocks and territorial waters, including among others the Sea Lion Rocks, and Sea Otter Island: *Provided*, That this proclamation shall not be so construed as to deprive any bona fide inhabitant of said island of any valid right he may possess under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven.

Warning is hereby expressly given to all persons not to enter upon, or to occupy, the tract or tracts of land or waters reserved by this proclamation, or to fish in, or use any of the waters herein described or mentioned.

ALEUTIAN ISLANDS RESERVATION

By Executive order of March 3, 1913, the Aleutian Islands Reservation consisting of "all islands of the Aleutian chain, Alaska, including Unimak and Sannak Islands on the east, and extending to and including Attu Island on the west," was created and set apart for various purposes, including the encouragement and development of the fisheries.

This reservation was placed under the joint jurisdiction of the Department of Commerce and the Department of Agriculture, and among the matters committed exclusively to the Department of Commerce was jurisdiction over the fisheries. Joint regulations for the administration of the reservation were promulgated April 30, 1921, by the two departments concerned.

These regulations in respect to the fisheries are hereby revoked. The Executive order of March 3, 1913, creating the Aleutian Islands Reservation is still in full force and effect, as specifically stated in the Executive orders of June 7, 1924, which revoked the Executive orders of February 17, 1922, and November 3, 1922, creating the Alaska Peninsula Fisheries Reservation and the Southwestern Alaska Fisheries Reservation, respectively.

REGULATIONS

By virtue of the authority vested in the Secretary of Commerce, fishing areas are hereby set apart and regulations governing fishing therein are made immediately effective, as follows:

I. BRISTOL BAY AREA

The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Cape Menshikof to Cape Newenham.

1. Commercial fishing for salmon shall be conducted solely by drift gill nets. The use of salmon traps, beach seines, and purse seines is prohibited.

2. The total length of gill nets on any salmon fishing boat shall not exceed 200 fathoms hung measure.

3. King salmon nets shall have a mesh at least 8½ inches stretched measure, and red salmon nets a mesh at least 5¾ inches stretched measure, between knots.

4. Commercial fishing for king salmon may begin at any time after the appearance of the run but must close by midnight of July 25 of each year.

5. Commercial fishing for red salmon shall not begin prior to midnight of June 25 and must close by midnight of July 25 of each year, when all commercial fishing for salmon shall cease in this area.

6. The trailing of web behind any fishing boat is prohibited above the markers fixing closed waters.

7. The use of motor-propelled fishing boats in catching salmon is prohibited.

8. Fishing for smelts in localities where red salmon are migrating is prohibited.

9. Commercial fishing for salmon is prohibited in the Ugashik River above a line extending at right angles across said river 500 yards below the mouth of King Salmon River.

10. Commercial fishing for salmon is prohibited above a line extending at right angles across Kvichak Bay from the marker on a high point on the east bank of Prosper Creek, about 700 yards above the Koggiung Cannery of the Alaska Packers Association, to the marker on the opposite side, the course being about north, 44° west, magnetic.

II. Alaska Peninsula Area

The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters of the Alaska Peninsula from Cape Menshikof on the Bering Sea shore and extending in a southwesterly direction to Unimak Pass, thence in a northeasterly direction along the Pacific side of the Alaska Peninsula to Castle Cape (Tuliumnit Point). The waters of Unimak, the Sannak, the Shumagin, and other adjacent islands are included.

1. In the waters of Nelson Lagoon, Herendeen Bay, and Port Moller the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, and from 12 o'clock midnight of each Tuesday until midnight of the following Wednesday, making a total weekly closed period in these waters of 84 hours which shall be effective throughout the entire salmon fishing season of each year.

2. In all other waters of this area the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 60 hours: *Provided*, That this extension of 24 hours closed period each week shall not be effective after midnight of July 20 each year.

3. Commercial fishing for salmon is prohibited in Thin Point Lagoon and stream and within a distance of 500 yards outside the entrance to said lagoon.

III. Chignik Area

The Chignik area is hereby defined to include the territorial coastal and tributary waters of Alaska along the mainland shore from Castle Cape (Tuliumnit Point) to Cape Kumnik.

1. The take of salmon within a line from Castle Cape to Cape Kumliun shall not exceed 50 per cent of the total run as determined at the weir in Chignik River operated by the Bureau of Fisheries.

IV. Kodiak Area

The Kodiak area is hereby defined to include the waters of the mainland shore extending from Cape Douglas southwestward to Cape Kumnik and the territorial coastal and tributary waters of Alaska surrounding Kodiak and adjacent islands, but excluding the waters embraced within the Afognak Forest and Fish Culture Reserve established by presidential proclamation of December 24, 1892.

Salmon fishery

1. The use of purse seines and floating traps for the capture of salmon is prohibited.

2. Commercial fishing for salmon is prohibited along the western shore of Kodiak Island between Cape Alitak and Cape Karluk.

3. Commercial fishing for salmon is prohibited in the Karluk River and within 100 yards of its mouth where it breaks through Karluk Spit into Shelikof Strait. The take of salmon in Karluk waters shall not exceed 50 per cent of the total run as determined at the weir in Karluk River operated by the Bureau of Fisheries.

4. Commercial fishing for salmon is prohibited from the village of Uyak in a general westerly direction to Cape Uyak.

5. In all waters inside of a line from Outlet Cape to Cape Uganik and to Miners Point, including Uganik Bay, Viekoda Bay, Terror Bay, and connecting and tributary waters, the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 60 hours.

6. The taking of salmon within a line from Alitak Cape to Trinity Cape shall not exceed 50 per cent of the total run as determined at the weirs on tributary waters of Alitak Bay operated by the Bureau of Fisheries.

7. Commercial fishing for salmon inside of a line from Cape Alitak to Trinity Cape shall be conducted solely by beach seines and traps

Herring fishery

1. Gill nets used in catching herring shall not be of smaller mesh than 3 inches, stretched measure.

2. No one shall place, or cause to be placed, across the entrance of any lagoon or bay any net or other device which will prevent the free passage at all times of herring in and out of said lagoon or bay.

V. Cook Inlet Area

The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

Salmon fishery

1. The 36-hour closed period for salmon fishing, prescribed by section 5 of the act approved June 6, 1924, is hereby extended to include the period from 6 o'clock antemeridian of Saturday of each week to 6 o'clock antemeridian of the Monday following, making a weekly closed period of 48 hours.

2. Commercial fishing for salmon is prohibited above a line from Point Possession to the western limit of the closed area around the mouth of the Susitna River.

3. Commercial fishing for salmon is prohibited in Chinik Inlet, Kamishak Bay, within a line which joins the outer headlands of the inlet and passes outside the two small islands which lie near its entrance.

4. The use of purse seines and floating traps for the capture of salmon is prohibited.

Herring fishery

1. Fishing for herring is prohibited during the period from January 1 to May 31 of each calendar year, except for bait or for local food purposes.

2. The use of purse seines in the capture of herring is prohibited at all times in Halibut Cove and Lagoon, including the waters within a line drawn from the light on Ismailof Island to the outermost point on Glacier Spit.

3. The maintaining of a herring pound or the dumping of offal and dead herring in the waters of Halibut Cove and Lagoon is prohibited.

4. Gill nets used in catching herring shall not be of smaller mesh than 3 inches, stretched measure.

5. No one shall place, or cause to be placed, across the entrance of any lagoon or bay any net or other device which will prevent the free passage at all times of herring in and out of said lagoon or bay.

VI. Prince William Sound Area

The Prince William Sound area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Point Whitshed on the east to and including Resurrection Bay on the west.

Salmon fishery

1. The 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock antemeridian of Saturday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 48 hours.

2. Commercial fishing for salmon is prohibited at all times within 1,000 yards of the mouth of Coghill River, the mouth of Eshamy (Chenaga) River, and the mouths of Robe River, Lowe River, and other unnamed streams flowing into Port Valdez in the immediate vicinity of Valdez.

3. In Eshamy Bay, Eshamy Lagoon, and tributary waters, outside the closed area around the mouth of Coghill River, and outside the closed area around the mouths of Robe River, Lowe River, and other unnamed streams flowing into Port Valdez in the immediate vicinity of Valdez there shall be a distance interval of at least 200 yards both endwise and laterally at all times between all nets operated. Nets operated in these waters shall not exceed 100 yards each in length, and shall be set in substantially a straight line.

Herring Fishery

1. Fishing for herring is prohibited during the period from January 1 to June 24, both dates inclusive, and from November 1 to December 31, both dates inclusive, of each calendar year, except for bait or for local food purposes.

2. Gill nets used in catching herring shall not be of smaller mesh than 3 inches, stretched measure.

3. No one shall place, or cause to be placed, across the entrance of any lagoon or bay any net or other device which will prevent the free passage at all times of herring in and out of said lagoon or bay.

VII. Copper River Area

The Copper River area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Point Whitshed on the west to and including Bering River on the east.

1. Commercial fishing for salmon shall not begin prior to midnight of May 25 of each year.

2. The 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 60 hours.

3. Stake nets for the capture of salmon shall not exceed 600 feet in length, and shall be set in substantially a straight line.

4. The use of traps for the capture of salmon is prohibited.

VIII. Southeastern Alaska Area

The southeastern Alaska area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Dixon Entrance on the south to and including Yakutat Bay on the north.

1. In the waters of this area west of the one hundred and thirty-ninth meridian of west longitude the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock antemeridian of Saturday of each

week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 48 hours.

2. Commercial fishing for salmon within the waters between the fifty-seventh and sixtieth parallels of north latitude and east of the one hundred and thirty-ninth meridian of west longitude is prohibited for 20 days from midnight of August 11 to midnight of August 31 of each year.

3. Commercial fishing for salmon within the waters south of the fifty-seventh parallel of north latitude, except the west coast of Prince of Wales Island and adjacent islands, is prohibited for 20 days from midnight of August 20 to midnight of September 9 of each year.

4. Commercial fishing for salmon within the waters of the west coast of Prince of Wales Island from Point Baker to Cape Chacon, including the waters of adjacent islands, is prohibited for 20 days from midnight of August 25 to midnight of September 14 of each year.

5. Commercial fishing for salmon is prohibited at all times in Yes Bay and within 1,000 yards outside of a line from Bluff Point to Syble Point.

6. Commercial fishing for salmon is hereby prohibited inside of markers which shall be established therefor in the following-described waters within this area:

(*a*) Thorne and Tolstoi Bays, indenting the eastern shore of Prince of Wales Island.
(*b*) Walker Cove, on the mainland tributary to Behm Canal.
(*c*) Naha Bay, indenting the western shore of Revillagigedo Island.
(*d*) Thoms Place, indenting the southwestern shore of Wrangell Island on Zimovia Strait.
(*e*) Olive Cove, indenting the northeastern shore of Etolin Island.
(*f*) Anita Bay, on Etolin Island, opening into Zimovia Strait.
(*g*) Tenakee Inlet and Freshwater Bay, indenting the eastern shore of Chichagof Island.
(*h*) Wilson Cove, indenting the western shore of Admiralty Island.
(*i*) Whitewater Bay, indenting the western shore of Admiralty Island.
(*j*) Saginaw Bay, indenting the northwestern shore of Kuiu Island.
(*k*) Ankau Creek and Inlet, in the Yakutat Bay region.
(*l*) Akwe or Ahquay River, in the Yakutat Bay region.

GENERAL REGULATIONS

By virtue of the authority conferred by the acts approved June 6, 1924, and June 26, 1906, the following regulations shall be immediately effective in all waters of Alaska, including the special areas already described above:

1. During closed periods all salmon traps within the areas affected shall be closed in accordance with the method prescribed by section 5 of the act of June 6, 1924.

2. All persons engaged in fishery operations are warned to give due regard to all markers erected by the Department of Commerce to indicate waters closed to fishery operations by the provisions of the act of June 6, 1924, and of regulations promulgated thereunder. Section 3 of that act specifically states that the mouths of creeks, streams, or rivers shall be taken to be as determined by the Secretary of Commerce and marked in accordance therewith.

3. In waters where a rack or weir is maintained by the Bureau of Fisheries for the purpose of counting salmon ascending to the spawning grounds, records of the catch of salmon shall be furnished daily by all operators to the local representative of the Bureau of Fisheries in charge, and upon notification by the Commissioner of Fisheries or his authorized representative that an excessive proportion of the run is being taken so that the escapement of any species is less than the 50 per cent specified by section 2 of the act of June 6, 1924, all commercial fishing operations shall at once be discontinued and shall not be resumed until permission therefor is granted by the Commissioner of Fisheries or his duly authorized representative.

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4. The driving of salmon downstream and the causing of salmon to go outside the protected area at the mouth of any salmon stream are expressly prohibited.

5. During the inspection of the salmon fisheries by the agents and representatives of this department they shall have at all times free and unobstructed access to all canneries, salteries, and other fishing establishments and to all hatcheries.

6. All persons, companies, or corporations owning, operating, or using any stake net, set net, trap net, pound net, or fish wheel for taking salmon or other fishes shall cause to be placed in a conspicuous place on said trap net, pound net, stake net, set net, or fish wheel the name of the person, company, or corporation owning, operating, or using same, together with a distinctive number, letter, or name which shall identify each particular stake net, set net, trap net, pound net, or fish wheel, said lettering and numbering to consist of black figures and letters, not less than 6 inches in length, painted on white ground.

7. If in the process of curing salmon bellies the remaining edible portion of the fish is not used, such action will be regarded as wanton waste within the meaning of section 8 of the act of June 26, 1906, and those who engage in this practice will be reported for prosecution as provided for in the act.

8. These regulations do not apply to the Afognak reservation, fishing within which is prohibited, except by resident natives, by the terms of the law and Executive order creating it.

9. The minimum size of razor clams taken for commercial purposes is fixed at 4½ inches in total length of shell. Not more than 5 per cent of the clams taken may measure less than this minimum.

10. These regulations shall be subject to such change or revision by the Secretary of Commerce as may appear advisable from time to time. They shall be in full force and effect immediately from and after date of issue.

HERBERT HOOVER,
Secretary of Commerce.

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HISTORIC BAYS

MEMORANDUM BY THE SECRETARIAT OF THE UNITED NATIONS

(Preparatory document No. 1)

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Introduction

I. *Object of the present study*

This study is intended for the United Nations Conference on the Law of the Sea, to be held in pursuance of General Assembly resolution 1105 (XI) of 21 February 1957.[1]

2. By the terms of that resolution, the General Assembly has referred to the Conference, as the basis for its proceedings, the draft articles concerning the law of the sea adopted by the International Law Commission at its eighth session. The Commission's draft article 7 deals with bays and reads as follows:

"1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and ..... rate

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 17 (A/3572), p. 54.*

more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

"2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

"3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

"4. The foregoing provisions shall not apply to so-called 'historic' bays or in any cases where the straight baseline system provided for in article 5 is applied."[8]

3. As will be gathered from the provisions above, the Commission excluded the so-called "historic" bays from the scope of its general rules concerning ordinary bays. The question of this class of bays was, therefore, reserved by the Commission.

4. The object of this memorandum, prepared by the Secretariat of the United Nations, is to provide the Conference with material relating to "historic bays".

5. Part I describes the practice of States by reference to a few examples of bays which are considered to be historic or are claimed as such by the States concerned. Part I then proceeds to cite the various draft codifications which established the theory of "historic bays", and the opinions of learned authors and of Governments on this theory. Part II discusses the theory itself, inquiring into the legal status of the waters of bays regarded as historic bays, and setting forth the factors which have been relied on for the purpose of claiming bays as historic. The final section is intended to show that the theory does not apply to bays only but is more general in scope.

II. *Definition of the subject*

A. *Bays and gulfs*

6. Dictionaries differentiate between the terms "bay" and "gulf", applying the former to a small indentation of the coast and the latter to a much larger indentation; in other words, a bay would be a small gulf. The distinction is not, however, reflected in geography. A cursory glance at an atlas will show that certain maritime areas are designated as bays although they are of considerable size, while other relatively much smaller areas are described as gulfs. For example, despite its name, Hudson Bay is vast, whereas the Gulf of St. Lopez is not more than four kilometres across at its entrance.

7. This paper deals with both bays and gulfs, geographical terms being immaterial to the subject. The pages which follow contain numerous references to penetrations of the sea inland, variously designated as bays and as gulfs without regard to their size. The usage of geographical nomenclature will be respected. In cases, however, where the text is not concerned with specific penetrations, the word "bay" will be used to denote both bays and gulfs.

B. *"Historic bays" and "historic waters"*

8. As indicated in part II of this paper, the theory of historic bays is of general scope. Historic rights are claimed not only in respect of bays, but also in respect of maritime areas which do not constitute bays, such as the waters of archipelagos and the water area lying between an archipelago and the neighbouring mainland; historic rights are also claimed in respect of straits, estuaries and other similar bodies of water. There is a growing tendency to describe these areas as "historic waters", not as "historic bays". The present memorandum will leave out of account historic waters which are not also bays. It will, however, deal with certain maritime areas which, though not bays *stricto sensu*, are of particular interest in this context by reason of their special position or by reason of the discussion or decisions to which they have given rise.[9]

III. *Origin and justification of the theory of historic bays*

9. The origin of this theory is traceable to the efforts made in the nineteenth century to determine, in bays, the baseline of the territorial sea. In view of the intimate relationship between bays and their surrounding land formations and in the light of the provisions of municipal law and of conventions governing the subject, proposals were made the object of which was to advance the starting line of the territorial sea towards the opening of bays. The intention was that, in bays, the territorial sea should not be measured from the shore — the method proposed in the case of more or less straight coasts — but should, rather, be reckoned as from a line drawn further to seaward. On this point agreement was virtually unanimous, though the exact location of the line from which the territorial sea was to be reckoned continued to be the subject of controversy. According to various proposals put forward, the territorial sea was to be measured from a straight line drawn across the bay at a point at which its two coasts were a specified distance apart (six miles, ten miles, twelve miles, etc.); the waters lying to landward of that line would be part of the internal waters of the coastal State.

10. This attempt to restrict, in respect of bays, the maritime area claimable by the coastal State as part of its internal waters conflicted with existing situations. There were bays of considerable size the waters of which

[8] *Ibid., Supplement No. 9* (A/3159) p. 15.

[9] A case in point is that of the maritime areas created by the application of the "straight baselines" method which, as regards the Norwegian coast, was approved by the International Court of Justice in the Anglo-Norwegian Fisheries case (see *infra*, especially paras. 50-72) and which is the subject of article 5 of the draft articles concerning the law of the sea adopted by the International Law Commission at its eighth session (see *infra*, especially paras. 104-108).

were wholly the property of the coastal States concerned — the territorial sea being accordingly reckoned, in these cases, from the opening of the bay in question towards the sea. Hence, for the purpose of codification, the choice lay between two possible courses, *viz.* allowing for these cases by means of an exception to the general rule to be formulated; and ignoring them by making the rule apply to all bays, regardless of their *de facto* status. The second course was felt to be arbitrary, and capable, if applied in practice, of causing international difficulties. Most of the draft codifications which dealt with bays endorsed the first solution. There remained, however, and there still remains, the question which bays are covered by the exception. The mere fact that a State claims the ownership of a bay which is not already territorial by virtue of the general rule does not *per se* ensure acceptance of the claim. The claim would have to be substantiated by reference to a specific criterion. And, according to the theory as originally conceived, this criterion was to be essentially historic. The modern view, however, has gone beyond this conception. According to one school of thought (which is more particularly discussed elsewhere in this paper), the proprietary title may be founded either on considerations connected with history or else on considerations of necessity, in which latter case the historical element might be lacking altogether.

PART I

The practice of States; draft international codifications of the rules relating to bays; opinions of learned authors

1. THE PRACTICE OF STATES: SOME EXAMPLES OF HISTORIC BAYS

11. The undermentioned bays, which are cited for the purpose of illustration, are regarded as historic bays or are claimed as such by the States concerned. They are grouped under two headings, namely, bays the coasts of which belong to a single State, and bays the coasts of which belong to two or more States.

A. *Bays the coasts of which belong to a single State*

Sea of Azov

12. The Sea of Azov is ten miles across at its entrance. It is situated entirely within the southern part of the territory of the Union of Soviet Socialist Republics and extends a considerable distance inland, its dimensions being approximately 230 by 110 miles. De Cussy[4] mentions the Sea of Azov among the gulfs "which may be regarded as part of the territorial sea". P. C. Jessup[5] states that this contention "seems reasonable and any such Russian claim would not be contested". A. N. Nikolaev regards the Sea of Azov as part of the "internal waters of the USSR" (see *infra*, para. 92). Gidel[6] is of the opinion that certain maritime areas — of which the Sea of Azov is one — should not be treated as falling within the category of historic waters "because, pursuant to the rules of the ordinary international law of the sea, these areas are in any case internal waters" (see *infra*, paras. 32-34).

Bay of Cancale (or Granville Bay)

13. This bay (in the north-western part of France) is about seventeen miles across at its entrance. In its reply to the inquiries advanced to Governments by the Preparatory Committee of the Conference on the Codification of International Law, 1930, the French Government stated that "Granville Bay is recognized to consist of territorial waters by the Fisheries Convention of 2 August 1839, concluded with Great Britain (article 1) and by article 2 of the Fisheries Regulations concluded on 24 May 1843 with Great Britain."[7] Gidel[8] states that "the waters of Granville Bay are recognized as French [territorial waters], even though the bay is about seventeen miles across at its entrance". According to Jessup,[9] the bay "seems to be claimed by France without objection. This may be due to the practical appropriation of the bay through the exploitation of its oyster fisheries over a long period. By treaties of 1839 and 1867 Great Britain recognized the exclusive French fisheries in those waters".

Bay of Chaleur

14. This bay (between the Provinces of Quebec and New Brunswick in Canada) does not exceed twelve miles in width; it is about 100 miles long. Its entrance into the Gulf of St. Lawrence is sixteen miles across. In its decision concerning the status of the bay, given in the case of *Mowat v. McFee* (1880), the Supreme Court of Canada held that the Bay of Chaleur was included in its entirety "within the present boundaries of the Provinces of *Quebec* and *New Brunswick*, and within the Dominion of Canada".[10]

15. "The arbitral award in the North Atlantic Fisheries case, 1910, upheld the British contention concerning the Bay of Chaleur".[11] In that award, the tribunal appointed by the Permanent Court of Arbitration recommended that the limit of the bay should be constituted by "the line from the light at Birch Point on Miscou Island to Macquereau Point

[4] *Phases et causes célèbres du Droit maritime des Nations*, 1856, pp. 97-98. In addition to the Sea of Azov the writer mentions "among the gulfs ... which may be regarded as part of the territorial sea, subject to the jurisdiction and control of the State by virtue of the right of self-preservation inherent in its independence" the Sea of Marmara, the Zuyder Zee and the Dollart, the Gulfs of Bothnia and Finland, the Gulf of St. Lawrence in North America, part of the Gulf of Mexico (to the extent indicated in respect of each of the coastal States of that Gulf), the innermost part of the Adriatic Gulf in the vicinity of Venice, Trieste, Rijeka (Fiume), etc., the Gulf of Naples, Salerno, Taranto, Cagliari, Thérmai (Salonica), Coron, Lepanto, etc.

[5] *The Law of Territorial Waters and Maritime Jurisdiction*, 1927, p. 383.

[6] *Droit international public de la Mer*, 1930-1934, vol. III, p. 663.

[7] Ser. L.o.N.P. 1929, v. 2, p. 160.

[8] *Op. cit.*, p. 657.

[9] *Op. cit.*, pp. 385-386.

[10] Reports of the Supreme Court of Canada, vol. 5 (1880), p. 66.

[11] Gidel, *op. cit.*, p. 659.

light".[13] The recommendation was accepted by Great Britain and the United States by the Treaty[14] of 20 July 1912 (article 2).[14]

Chesapeake Bay

16. This bay is twelve miles across at its entrance; it is nowhere more than twenty miles wide and is about 200 miles long. Its status was considered in 1885 by the Second Court of Commissioners of Alabama Claims in the case of the "Alleganean", a vessel which had been sunk by Confederate forces in the waters of the bay. The Court held[15] that Chesapeake Bay was entirely within the territorial jurisdiction of the United States.

17. After citing the case-law of the English courts concerning the Bristol Channel and Conception Bay, and the opinions of certain writers on the status of bays, the Court proceeded:

"We must now examine the local circumstance touching the status of Chesapeake Bay, and then determine whether those should be held to be the open ocean or jurisdictional waters of the United States in the light of these authorities.

"The headlands are about twelve miles apart, and the bay is probably nowhere more than twenty miles in width. The length may be 200 miles. To call it a bay is almost a misnomer. It is more a mighty river than an arm or inlet of the ocean. It is entirely encompassed about by our own territory, and all of its numerous branches and feeders have their rise and their progress wholly in and through our own soil. It cannot become an international commercial highway; it is not and cannot be made a roadway from one nation to another.

"The second charter of King James I to the Virginia Company in the year 1609 granted: 'All those lands, countries, and territories situate, lying, and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the seacoast to the northward 200 miles, and all along the seacoast to the southward 200 miles, and all that space and circuit of land lying from the seacoast of the precinct aforesaid up into the land throughout from sea to sea, west and northwest, together with all the soils, grounds, havens, ports, . . . rivers, waters, fishings, etc.'

"This language would seem to place Chesapeake Bay within the boundary lines of Virginia. A line running north (as near as may be) from Point Comfort along the seacoast crosses the mouth of the bay from Cape Henry to Cape Charles.

"By the King James Charter to Lord Baltimore in 1632, erecting the territory of Maryland, the southern boundary line is made to cross Chesapeake Bay from Smiths Point, at the mouth of the Potomac River, to Watkin's Point, on the eastern shore, which apparently places a portion of this bay within the territory of Maryland. Had this not been intended, the boundary would presumably have followed the shore line around the bay.

"It is a part of the common history of the country that the States of Virginia and Maryland have from their earliest territorial existence claimed jurisdiction over these waters, and it is of general knowledge that they still continue to do so.

"The legislation of Congress has assumed Chesapeake Bay to be within the territorial limits of the United States. The acts of 31 July 1789, ch. 5; 4 August 1790, ch. 35; and 2 March 1799, ch. 128, section 11, establishing revenue districts, provided that 'the authority of the officers of the district (Norfolk to Portsmouth) shall extend over all the waters, shores, bays, harbours, and inlets comprehended within a line drawn from Cape Henry to the mouth of James River'. By section 549, Rev. Stat. U.S., the eastern judicial district for Virginia embraces the 'residue of the State' not included in the western district. The boundaries of the State include all of Chesapeake Bay south of a line running from Smiths Point to Watkins Point, and hence the eastern district must embrace so much of the bay."

18. Referring to the decision of 1793 in respect of Delaware Bay (see infra, para. 22) the Court noted:

"If it be said that the mere claims of a nation to jurisdiction over adjacent waters are to be accepted with some degree of hesitation, then the action in reference to the *Grange* is of much weight, for there the claim made by the United States was promptly acquiesced in by two great foreign Powers, when passions were excited, and when such acquiescence was greatly against the immediate interest of one of the combatants, as well as against the general interest of both.

"It will hardly be said that Delaware Bay is any the less an inland sea than Chesapeake Bay. Its configuration is not such as to make it so, and the distance from Cape May to Cape Henlopen is apparently as great as that between Cape Henry and Cape Charles."

19. After stressing that the question to be adjudicated was "of very considerable national importance", the Court concluded:

"Considering, therefore, the importance of the question, the configuration of Chesapeake Bay, the fact that its headlands are well marked, and but twelve miles apart, that it and its tributaries are wholly within our own territory, that the boundary lines of adjacent States encompass it; that from the earliest history of the country it has been claimed to be territorial waters, and that the claim has never been questioned; that it cannot become the pathway from one nation to another; and remembering the doctrines of the recognized authorities upon international law, as well as the holdings of the English courts as to the Bristol Channel and Conception Bay, and bearing in mind the matter of the brig "Grange" and the position taken by the Government as to Delaware Bay, we are forced to the conclusion that Chesapeake Bay must be held to be wholly within the territorial jurisdiction and authority of the Government of the United States and no part of the 'high seas' within the meaning of the term used in section 5 of the act of 5 June 1872."

Conception Bay

20. This bay (in Newfoundland) is twenty miles across at its entrance, has an average width of fifteen miles and is some forty miles long. It has been claimed by Great Britain as being entirely within its jurisdiction, a claim which was upheld in 1877 by the Privy Council in the case *Direct United States Cable Co v. The Anglo-American Telegraph Co.*[16] The Privy Council said:

[13] Scott, *Hague Court Reports, First Series*, 1916, p. 189. Gidel, *op. cit.*, p. 639, explains this delimitation as follows: "This bay was considered British as far as a line sixteen miles long drawn between the two lights at Birch Point towards Miscou Island (Marquereau Point light)."

[14] *Treaties and Conventions between the United States and other Powers*, 1910-23, vol. III, p. 2632.

[15] Higgins and Colombos: *The International law of the Sea*, London, 1943, p. 119.

[16] Moore, J. B., *A History and Digest of the International Arbitrations to which the United States has been a Party* (Washington, 1898) vol. 4, pp. 4338-4341.

[16] Higgins and Colombos, *op. cit.*, p. 116.

"Passing from the common law of England to the general law of nations, as indicated by the text writers on international jurisprudence, we find an universal agreement that harbours, estuaries and bays landlocked belong to the territory of the nation which possesses the shores round them, but no agreement as to what is the rule to determine what is 'bay' for this purpose.

"It seems generally agreed that, where the configuration and dimensions of the bay are such as to show that the nation occupying the adjoining coasts also occupies the bay, it is part of the territory; and, with this idea, most of the writers on the subject refer to defensibility from the shore as the test of occupation: some suggesting, therefore, a width of one cannon-shot from shore to shore, or three miles; some, a cannon-shot from each shore, or six miles; some, an arbitrary distance of ten miles. All of these are rules which, if adopted, would exclude Conception Bay from the territory of Newfoundland; but also would have excluded from the territory of Great Britain that part of the Bristol Channel which in *Regina v. Cunningham* was decided to be in the county of Glamorgan. On the other hand, the diplomatists of the United States in 1793 claimed a territorial jurisdiction over much more extensive bays, and Chancellor Kent, in his Commentaries, though by no means giving the weight of his authority to this claim, gives some reason for not considering it altogether unreasonable.

"It does not appear to their Lordships that jurists and text writers are agreed what are the rules as to dimensions and configuration which, apart from other considerations, would lead to the conclusion that a bay is or is not a part of the territory of the State possessing the adjoining coasts, and it has never, that they can find, been made the ground of judicial determination. If it were necessary in this case to lay down a rule, the difficulty of the task would not deter their Lordships from attempting to fulfil it. But in their opinion it is not necessary to do so. It seems to them that, in point of fact, the British Government has for a long period exercised dominion over this bay, and that their claim has been acquiesced in by other nations, so as to show that the bay has been for a long time occupied exclusively by Great Britain, a circumstance which, in the tribunals of any country, would be every important. And, moreover (which in a British tribunal is conclusive), the British Legislature has by Acts of Parliament declared it to be part of the British territory, and part of the country made subject to the Legislature of Newfoundland."[17]

21. In its award, rendered on 7 September 1910, the North Atlantic Coast Fisheries Arbitral Tribunal refrained from expressing any opinion on Conception Bay,[18] on the grounds that that bay had been provided for by the above-mentioned decision of the Privy Council, in which decision the United States had acquiesced.[19]

Delaware Bay

22. The status of Delaware Bay, which is ten miles across at its entrance and forty miles long from its entrance to the mouth of the Delaware River, was determined in connexion with the case of the British vessel *Grange*, captured in 1793 in the waters of the bay by the French frigate *L'Embuscade*. The incident occurred while Great Britain and France were at war, the United States being neutral. The Attorney-General, E. Randolph, consulted, rendered an opinion (from which extracts are given below) to the effect that the vessel *Grange* had been captured in neutral territory:

"The essential facts are:

"That the river Delaware takes its rise within the limits of the United States;

"That, in the whole of its descent to the Atlantic Ocean, it is covered on each side by the territory of the United States;

"That, from tide water to the distance of about sixty miles from the Atlantic Ocean, it is called the *river* Delaware;

"That, at this distance from the sea, it widens and assumes the name of the *Bay* of Delaware, which it retains to the mouth;

"That its mouth is formed by the capes Henlopen and May; the former belonging to the State of Delaware, in property and jurisdiction, the latter to the State of New Jersey;

"That the Delaware does not lead from the sea to the dominions of any foreign nation;

"That, from the establishment of the British provinces on the banks of the Delaware to the American Revolution, it was deemed the peculiar navigation of the British Empire;

"That, by the Treaty of Paris, on 3 September 1783, his Britannic Majesty relinquished, with the privity of France, the sovereignty of those provinces, as well as of the other provinces and colonies;

"And that the *Grange* was arrested *in* the Delaware *within the capes*, before she had reached the sea, after her departure from the port of Philadelphia.

"... the corner stone of our claim is, that the United States are proprietors of the lands on both sides of the Delaware, from its head to its entrance into the sea.

"... These remarks may be enforced by asking, What nation can be injured in its rights by the Delaware being appropriated to the United States? And to what degree may not the United States be injured, on the contrary ground? It communicates with no foreign dominion; no foreign nation has, ever before, exacted a community of right in it, as if it were a main sea; under the former and present governments, the exclusive jurisdiction has been asserted; by the very first collection law of the United States, passed in 1789, the county of Cape May, which includes Cape May itself, and all the waters thereof, theretofore within the jurisdiction of the State of New Jersey, are comprehended in the district of Bridgetown. The whole of the State of Delaware, reaching to Cape Henlopen, is made one district. Nay, unless these positions can be maintained, the bay of Chesapeake, which, in the same law, is so fully assumed to be within the United States, and which, for the length of the Virginia territory, is subject to the process of several counties to any extent, will become a rendezvous to all the world, without any possible control from the United States. Nor will the evil stop here. It will require but another short link in the process of reasoning, to disappropriate the mouths of some of our most important rivers. If, as Vattel inclines to think in the 294th section of his first book, the Romans were free to appropriate the Mediterranean, merely because they secured, by one single stroke, the immense range of their coast, how much stronger must the vindication of the United States be, should they adopt maxims for prohibiting foreigners from gaining, without permission, access into the heart of their country.

"This inquiry might be enlarged by a minute discussion of the practice of foreign nations, in such circumstances. But I pass it by; because the United States, in the commencement

[17] Quoted by Phillimore, *International Law*, vol. I (1879), pp. 289-290.

[18] Scott, *op. cit.*, p. 190.

[19] Higgins and Colombos, *op. cit.*, p. 116, quoting de Martens, *Nouveau Recueil Général*, 3rd ed. (1911), vol. 4, pp. 89-129.

of their career, ought not to be precipitate in declaring their approbation of any usages (the precise facts concerning which we may not thoroughly understand) until those usages shall have grown into principles, and are incorporated into the law of nations; and because no usage has ever been accepted, which shakes the foregoing principles.

"The conclusion then is, that the *Grange* has been seized on neutral ground. If this be admitted, the duty arising from the illegal act is restitution."[24]

23. France consented to release the *Grange*. "Great Britain, by requesting the restoration of its captured vessel, recognized that Delaware Bay was within the jurisdiction of the United States and France, by returning the British vessel, tacitly accepted the declaration of territoriality made by the United States."[25]

Bay of El-Arab

24. This bay (in northern Egypt), which is only eighteen miles in depth, is seventy-five miles wide at its opening into the sea. In its reply to questionnaire No. 2 (1926) of the Committee of Experts for the Progressive Codification of International Law, the Egyptian Government stated that "the extent of Egyptian territorial waters was fixed at three miles by the Decree-Laws of 21 April 1926 on Fishing and Sponge-fishing, except in the Bay of El-Arab, the whole of which, according to the Decree-Law on Sponge-fishing, is included in the territorial sea".[26]

25. Articles 1 (*b*) and 4 (*a*) of the Egyptian Decree of 15 January 1951[27] provide that the inland waters of Egypt include the waters of all bays along the Egyptian coasts, without specifying any limit.

26. The British Government protested, through diplomatic channels, against this Decree, stating that it was unable to accept it as being in conformity with the rules of international law. In its note of protest, the British Government pointed out that no historic bay "is situated in Egypt".[28]

Hudson Bay

27. The dimensions of this bay are considerable; its breadth is about 600 miles and its length about 1,000 miles. The Canadian writer, V. Kenneth Johnston[29] gives the following information concerning the status of Hudson Bay:

"In 1906 ... notwithstanding the assumption of the world as to the status of Hudson Bay, the Government of Canada placed on its statute books a statute declaring the waters of Hudson Bay to be territorial waters of Canada (R.S.C. 1927, cap. 73, sec. 9, sub-sec. 10; Statutes of Canada, 1906, cap. 45, sec. 9 (12)). That statute is still in force in Canada without, so far as is known, any protest having been made by any foreign Government. This statute has been and presumably still is being actively enforced in Canada and in Hudson Bay as part of Canada. The Government of Canada, therefore, has appropriated and continues to appropriate Hudson Bay and presumably Hudson Strait as Canadian national waters. ..."

The writer maintains that, in accordance with the rules of international law, Canada has, in respect of that bay, a title based on occupation and on the acquiescence of other States in that occupation.

28. Higgins and Colombos[30] state that:

"... The British claim has not, so far, been expressly admitted by the United States."

And they add:

"The Treaty of 20 July 1912, which was concluded for the purpose of carrying out the award of the Tribunal in the North Atlantic Fisheries Arbitration of 1910, provides 'that it is understood that the award does not cover Hudson Bay', thus reserving all existing British rights to the bay."[31]

Miramichi Bay

29. "Miramichi Bay is situated in New Brunswick, and has a headland width of 14.5 miles. By a New Brunswick Statute of 1799[32] this bay was treated as being within the adjoining county of Northumberland, and subsequent amending acts have confirmed this claim.[33]

"In no single instance has the jurisdiction of Great Britain over these bays been challenged by any other Power than the United States, and the objection of the United States has been limited to the sole question of the extent of the fishing liberties given by the Treaty of 1818."[34]

Bays of Laholm and Skelderviken

30. In its reply to questionnaire No. 2 (1926) of the Committee of Experts for the Progressive Codification of International Law, the Swedish Government stated:

"According to Swedish law, the whole area of any bay which indents the coast to an appreciable extent is in every case to be regarded as territorial water, and the exterior territorial waters are measured from a line drawn across the bay between the two extreme points where the bay merges into the general coast-line. During the Great War, therefore, the Swedish Government always maintained that the Bays of Laholm and Skelderviken, on the south-west coast of Sweden, were entirely Swedish territorial waters.

"In the case of the Bay of Laholm the Swedish argument was singularly strengthened by the provisions of a fisheries convention concluded between Sweden and Denmark. The rule has also been adopted by Swedish jurisprudence."[35]

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[24] Moore, *op. cit.*, vol. I (1906), pp. 735-739.

[25] Fauchille, *Traité de droit international public*, vol. I (1925), p. 361.

[26] Ser. L.o.N.P. 1927, v. 1, p. 257.

[27] *Revue égyptienne de droit international*, vol. 6 (1950), p. 175.

[28] *Ibid.*, vol. 7 (1951), p. 91.

[29] "Canada's title to Hudson Bay and Hudson Strait", in *British Year Book of International Law*, 1934, p. 2.

[30] *Op. cit.*, p. 117.

[31] For Hudson Bay, see also Balch "Is Hudson Bay a closed or open sea?" in *American Journal of International Law*, vol. 6 (1912), p. 409; P. C. Jessup, *op. cit.*, pp. 411-12; Pitt-Cobbett, *Cases in International Law*, vol. 1 (1947), p. 162.

[32] 39 Geo. III, 5.

[33] 50 Geo. III, c. 5; 4 Geo. IV; c. 23; 9 and 10 Geo. IV, c. 3; 4 Wm. IV, c. 51.

[34] From the extract from the British case in the arbitration concerning the North Atlantic coast fisheries, 1909-1910, annexed to the Norwegian Counter-Memorial submitted to the International Court of Justice in the 1951 Anglo-Norwegian Fisheries case (vol. II, p. 271).

[35] Ser. L.o.N.P. 1927, v. 1, p. 232.

31. The position of Sweden in regard to the bays along its coasts, and in particular to Laholm Bay, is set forth by Mr. Elof Lofgren, then legal adviser to the Ministry of Foreign Affairs, in an opinion given on 11 February 1925 in connexion with the capture on 19 January 1925 by the Swedish authorities of the German trawler *Heinrich Augustin*, found trawling at a place situated 1.4 distance minutes outside the closing line of Laholm Bay.[36]

The Zuyder Zee

32. "The Zuyder Zee in Holland lies in two portions, which may be designated the inner and outer. The latter would probably not be considered a closed sea were it not for a fringe of islands which almost completely enclose it save for narrow passages; the body of water thus enclosed is about forty miles long by twenty wide. From this area a narrow passage about nine miles wide leads into the inner portion, which is about forty-five miles long by thirty-five wide.

"These bodies of water are claimed by the Netherlands and, judging by the testimony of the writers, this claim has never been called into question ..."[37]

33. Fauchille[38] states:

"The Zuyder Zee, which is claimed by the Netherlands as its property and from the extremity of which the territorial sea extends, in the general view, to its classic distance, seems to us to be indeed a special sea, governed by the rules relating to bays, because (1) this sea is enclosed by a continuous fringe of islands, separated from each other by narrow passages; (2) it is comparable to a lake, for like a lake it freezes over, whereas the sea resists freezing. The Netherlands claim in respect of the Zuyder Zee has therefore been generally accepted."

34. The Netherlands title to this sea can be based not only on a historic right proper but also on ordinary international law. A. Chrétien,[39] who does not admit the theory of historic bays (see *infra*, para. 92) concedes nevertheless that certain small bays, among others the Zuyder Zee, should be regarded as subject to the full and absolute sovereignty of the coastal State. Gidel[40] mentions the Zuyder Zee among the maritime areas which are sometimes designated as historic "but which should not be treated as falling within that category [of historic waters] because pursuant to the rules of the ordinary international law of the seas these areas are in any case internal waters".

Norwegian bays and fjords

35. In its reply to questionnaire No. 2 (1926) of the Committee of Experts for the Progressive Codification of International Law, the Norwegian Government stated:

"... The Norwegian bays and fjords have always been regarded and claimed by Norway as forming part of the territory of the Kingdom. This attitude is the necessary result of history, of local conditions along the very indented Norwegian coasts with their remarkable geographical peculiarities, and of the capital importance of a rational exploitation of the fjords and coastal archipelagos (*skjaergaard*) from the point of view of living conditions for the coastal population, and national economy. By fjords we mean not only those sea areas which are bounded on both sides by the continental coast-line, but also areas bounded by a continuous series of islands or a coastal archipelago (*skjaergaard*). Norwegian law has always held from most ancient times that these bays and fjords are *in their entirety* an integral part of Norwegian territorial waters, even should the breadth at the seaward end exceed the more or less arbitrary maxima breadths which certain countries, with a less characteristic coastline, have recently established for special purposes in view of their own needs and for very dissimilar reasons."[41]

36. These claims were formulated more strongly in the Fisheries Case between the United Kingdom and Norway, decided by the International Court of Justice in its judgement given on 18 December 1951.[42] It will be noted that at the end of his oral reply the Agent of the United Kingdom Government stated:

"... Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay ..., whether the proper closing line of the indentation is more or less than ten sea miles long." (Conclusion No. 5).[43]

37. In its judgement in that case, the Court concluded that the Svaerholthavet basin had geographically the character of a bay. As to the Lopphavet basin, however, the Court, while not recognizing it as having the character of a bay, agreed that the historic rights claimed by Norway in respect of it were sufficient justification for the line drawn by that country (*infra*., para. 69-72).

38. The Vestfjord,[44] about 100 kilometres across at its entrance and 170 kilometres long, was the subject of a diplomatic dispute when, in 1868, the French vessel *Les Quatre Frères* was seized by the Norwegian authorities in the waters of the fjord. The French Government having protested, the Minister of the Interior of Norway wrote a memorandum to the Norwegian Minister of Foreign Affairs in which the following passage occurs:

"The fisheries in a gulf which is considered to form part of the territorial sea of Norway have been regarded as the exclusive property of this country; it would certainly not be consistent with the principles of international law if it should be possible to produce sudden changes in a legal situation which is based on the tacit knowledge of several centuries."

39. J. Mochot,[45] who quotes this passage from the

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[36] The text of the opinion is reproduced in P. C. Jessup, *op. cit.*, 413-24; also in *Fisheries Case (United Kingdom v. Norway), Judgement* [I.C.J.] of *18 December 1951*, vol. II, Annex 43, pp. 753-61.

[37] P. C. Jessup, *op. cit.*, p. 438.

[38] "*Le droit de l'Etat sur la Mer territoriale*" in *Revue générale de Droit international public*, vol. V (1893), p. 266.

[39] *Principes de Droit international public*, part I, Paris, 1893, p. 102.

[40] *Op. cit.*, p. 663.

[41] Ser. L.o.N.P. 1927, v. 1, p. 174.

[42] See especially the Norwegian Counter-Memorial, *I.C.J., Fisheries Case (United Kingdom v. Norway) Judgement of 18 December 1951*, vol. I, pp. 214-574.

[43] *Ibid., I.C.J. Reports, 1951*, p. 121.

[44] In its judgement in the Fisheries Case, the International Court of Justice noted that "the waters of the Vestfjord, as indeed the waters of all other Norwegian fjords, can only be regarded as internal waters" (*loc. cit.*, p. 142).

[45] *Le Régime des baies et des golfes en droit international*, Paris, 1938, p. 136.

Norwegian Minister's memorandum, says that "France, accepting the Norwegian contention, expressly stated that it did so solely by reason of the special configuration of the coasts of Norway and in derogation of all the rules of international law".

40. Another fjord, the Varangerfjord, which is about thirty miles across at its entrance and fifty miles long, gave rise to difficulties between Great Britain and Norway. In 1911, the British trawler *Lord Roberts* was arrested and sentenced by the Vardö court for trawling in the waters of the fjord. After the British Government had made representations, the Norwegian Government appointed a commission of inquiry. The commission concluded, on historic grounds, that the monopoly of fisheries for the benefit of Norwegian nationals in the Varangerfjord was justified by long and unchallenged usage.[42] [43]

41. Gidel[44] says that the Norwegian claims in respect of the Vestfjord and the Varangerfjord should be considered "as fully admitted, despite certain challenges (by France, in the case of the vessel *Les Quatre Frères*, 1868-69 and by Great Britain in 1869 and most recently in April 1911)".

Bays the coasts of which belong to Portugal

42. In its reply to the inquiry addressed to Governments by the Preparatory Committee for the Codification Conference (1930), the Portuguese Government stated that "Portugal regards as part of her European continental territory the bays formed by the estuaries of the Rivers Tagus and Sado, comprising the areas included between Cape Razo and Cape Espichel and between Cape Espichel and Cape Sines respectively" (see *infra*, para. 93).

Other examples of historic bays

43. The undermentioned maritime areas are likewise regarded as historic bays or are claimed as such by the States concerned:

Argentina: The River Plate estuary.[45]

Australia:

Northern Australia: Van Diemen Gulf (opening: sixteen miles); Buckingham Bay (opening: twenty miles); Blue Mud Bay (opening: fifteen miles);

South Australia: Coffin Bay (opening: twelve miles); Streaky Bay (opening: fourteen miles); Spencer Gulf (opening: forty-eight miles); Investigator Strait with St. Vincent's Gulf (opening: twenty-eight miles);

Western Australia: Exmouth Gulf (opening: thirteen miles); Roebuck Bay (opening: fourteen miles); Shark Bay (opening: fourteen miles);

Queensland: Broad Sound (opening: fifteen miles); Upstart Bay (opening: ten miles); Moreton Bay (opening: ten miles); Hervey Bay (opening: thirty-eight miles);

Tasmania: Oyster Bay (opening: fifteen miles); Storm Bay (opening: thirteen miles).[46]

Dominican Republic: Bays of Samaná, Ocoa and Neyba.[47]

France: *Equatorial Africa*: Bays of Mondah, Cape Lopez (opening: eighteen miles), Loango, Pointe Noire and Corisco (Río Muni) and the Estuary of the Gabon; *East Africa*: Tadjura Gulf (opening: over ten miles).[48]

Tunisia: Gulf of Tunis (opening: twenty-three miles),[49] Gulf of Gabès (opening: fifty miles).[50]

Union of Soviet Socialist Republics: Kara Sea, Laptev Sea, East Siberian Sea and Chukchi Sea.[51]

United Kingdom: Bristol Channel.[52]

United States of America: Monterey Bay,[53] Long Island Sound.[54]

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[42] Act No. 3342 of 13 July 1952, article 2 (United Nations Legislative Series, *Laws and Regulations on the Régime of the Territorial Sea*, ST/LEG/SER.B/6, p. 11).

[43] Gidel, *op. cit.*, p. 657.

[44] Gidel, *op. cit.*, p. 663.

[45] *Ibid.*

[46] See A. N. Nikolaev, *infra*, para. 92.

[47] The case of *Regina v. Cunningham* in 1859: a collision had occurred three miles from the shore of the county of Glamorgan in Wales in the neighbourhood of Cardiff at a spot where the width of the Bristol Channel is slightly more than ten miles. It was held by Cockburn, C. J., that the part of the sea where the collision had occurred formed part of the county of Glamorgan. Then, using more general language, the learned Chief Justice said: "The whole of this inland sea between the counties of Somerset and Glamorgan is to be considered as within the counties by the shores of which its several parts are respectively bounded" (Bell's *Crown Cases*, 72, 86).

The question of the juridical status of the Bristol Channel arose again in the case of the "Fagernes" [1926] P. 185; [1927] P. 311, (C.A.). A collision had occurred more than twenty miles to the east of Lundy Island and some miles to the eastward of a line drawn from Bull Point in Devon to Port Eynon in Glamorgan. The place where the collision had occurred was also roughly half way across the Bristol Channel, which in this area is about twenty miles wide. Hill, J., held that the collision had taken place in British territory. However, his judgement was overruled by the Court of Appeal [1927] P. 311, which was much influenced by the fact that the Attorney-General, when asked by the Court whether the Crown did or did not claim that particular part of the Bristol Channel where this collision had occurred as being within the territorial jurisdiction of the King, replied that it did not. (See also: P. C. Jessup, *op. cit.*, pp. 383-384; Mochot, *op. cit.*, 126-127; Pitt Cobbett, *Cases on International Law*, 6th ed., 1947, pp. 156-157, 160).

[48] P. C. Jessup, *op. cit.*, pp. 428-30.

[49] See *Mahler v. Transportation Co. Case* (1886), 35 N.Y. 352; *J. Duffy Case* (1926, D. C. Conn.) 14 F. (2nd) 426; P. C. Jessup, *op. cit.*, pp. 424-7.

[50] Gidel, *op. cit.*, pp. 661-2.

[51] J. Mochot; *op. cit.*, pp. 136-7.

[52] Op. cit., p. 661.

[53] Gidel, *op. cit.*, pp. 653-4; Emilio Mitre, *Principales Escritos y Discursos*, 1910; Saavedra Lamas, *La crise de la codification et la doctrine argentine du droit international*, vol. I, pp. 318-32. Both Argentina and Uruguay are riparian States of the River Plate.

[54] This list of Australian bays is given by Prof. A. H. Charteris in his *Chapters on International Law*, 1940, p. 99; quoted in the Norwegian Counter-Memorial in the *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951*, vol. I, pp. 445.

B. *Bays the coasts of which belong to two or more States*

Gulf of Fonseca

44. This gulf, which is bounded by the territories of Nicaragua, Honduras and El Salvador, is nineteen and a half miles across at its entrance between Cape Cosiguina (Nicaragua) and Cape Amapala (El Salvador). By the Treaty of 5 August 1914 between the United States and Nicaragua, the latter country granted to the former, for the term of ninety-nine years, certain rights in a portion of Nicaraguan territory bordering on the Gulf of Fonseca, as well as certain rights for the construction of an interoceanic canal. El Salvador disputed the validity of the Treaty in proceedings instituted against Nicaragua in the Central American Court of Justice. In its judgement, rendered on 9 March 1917, the Court held unanimously that the gulf in question was "an historic bay possessed of the characteristics of a closed sea".[55]

45. The grounds on which this decision was based are important and, accordingly, in order that all the considerations underlying the Court's reasoning may be fully presented, some extracts from its decision are quoted textually:

"In order to fix the international legal status of the Gulf of Fonseca it is necessary to specify the characteristics proper thereto from the threefold point of view of history, geography and the vital interests of the surrounding States.

"The historic origin of the right of exclusive ownership that has been exercised over the waters of the Gulf during the course of nearly four hundred years is incontrovertible, first, under the Spanish dominion — from 1522, when it was discovered and incorporated into the royal patrimony of the Crown of Castile, down to the year 1821 — then under the Federal Republic of the Centre of America, which in that year attained its independence and sovereignty, down to 1839; and, subsequently, on the dissolution of the Federation in that year, the States of El Salvador, Honduras and Nicaragua, in their character of autonomous nations and legitimate successors of Spain, incorporated into their respective territories, as a necessary dependency thereof for geographical reasons and purposes of common defence, both the Gulf and its archipelago, which nature had indented in that important part of the continent, in the form of a gullet.

"During these three periods of the political history of Central America, the representative authorities have notoriously affirmed their peaceful ownership and possession in the Gulf; that is, without protest or contradiction by any nation whatsoever, and, for its political organization and for police purposes, have performed acts and enacted laws having to do with the national security, the observance of health and with fiscal regulations. A secular possession such as that of the Gulf could only have been maintained by the acquiescence of the family of nations; and in the case here at issue it is not that the *consensus gentium* is deduced from a merely passive attitude on the part of the nations, because the diplomatic history of certain Powers shows that for more than half a century they have been seeking to establish rights of their own in the Gulf for purposes of commercial policy; but always on the basis of respect for the ownership and possession which the States have maintained by virtue of their sovereign authority."[56]

46. The Court stated further:

"The foregoing descriptions give an exact idea of how vital are the interests guarded by the Gulf of Fonseca, and, if those interests are of incalculable value in making up the characteristics of an 'historic bay' applicable thereto, there are other factors what determine even more clearly that legal status. These are:

"A. The projected railway that Honduras began and which she will not abandon until this great aspiration of hers shall have been concluded. Over that railway will pass the interoceanic traffic that is to develop the rich and extensive regions of the country. Its terminal stations, with their wharves, etc., will be located very probably on one of the principal islands nearest the coast of the Gulf.

"B. El Salvador, in her turn has under her control a railroad which, starting at the port of La Unión, follows its course through important and rich departments of the Republic to connect with lines entering from Guatemala at the Salvadorean frontier.

"C. The long-projected prolongation of the Chinandega railroad to a point on the Real Estuary on the Gulf of Fonseca to expedite and make more frequent communication on that side with the interior of Nicaragua.

"D. The establishment of a free port decreed by the Salvadorean Government on Meanguera island.

"E. The Gulf is surrounded by various and extensive departments of the three riparian countries. These are of great importance because they are destined to great commercial, industrial and agricultural development; their products, like those of the departments in the interior of those States, must be exported by way of the Gulf of Fonseca, and through that Gulf must come also the increasing importations.

"F. The configuration and other conditions of the Gulf facilitate the enforcement of fiscal laws and regulations and guarantee the full collection of imposts against frauds against the fiscal laws.

"G. The strategic situation of the Gulf and its islands is so advantageous that the riparian States can defend their great interests therein and provide for the defense of their independence and sovereignty.

"*Whereas*: It is clearly deducible from the facts set forth in the preceding paragraphs that the Gulf of Fonseca belongs to the special category of historic bays and is the exclusive property of El Salvador, Honduras and Nicaragua, this on the theory that it combines all the characteristics or conditions that the text writers on international law, the international law institutes and the precedents have prescribed as essential to territorial waters, to wit, secular or immemorial possession accompanied by *animo domini* both peaceful and continuous and by acquiescence on the part of other nations, the special geographical configuration that safeguards so many interests of vital importance to the economic, commercial, agricultural and industrial life of the riparian States and the absolute, indispensable necessity that those States should possess the Gulf as fully as required by those primordial interests and the interest of national defence."[57]

47. By a majority vote, the Court held[58] that the three riparian States were co-owners of the waters of the gulf, "except as to the littoral marine league which is the exclusive property of each". The Court said in this respect:

"The legal status of the Gulf of Fonseca having been recognized by this Court to be that of a historic bay possessed of the characteristics of a closed sea, the three riparian States of El Salvador, Honduras and Nicaragua are, therefore,

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[55] *American Journal of International Law*, vol. 11 (1917), p. 693.

[56] *Ibid.*, pp. 700-701.

[57] *Ibid.*, pp. 704-5.

[58] *Ibid.*, p. 693.

recognized as co-owners of its waters, except as to the littoral marine league which is the exclusive property of each, and with regard to the co-ownership existing between the States here litigant, the Court, in voting on the fourteenth point of the questionnaire, took into account the fact that as to a portion of the non-littoral waters of the Gulf there was an overlapping or confusion of jurisdiction in matters pertaining to inspection for police and fiscal purposes and purposes of national security, and that, as to another portion thereof, it is possible that no such overlapping and confusion takes place. The Court, therefore, has decided that as between El Salvador and Nicaragua co-ownership exists with respect to both portions, since they are both within the Gulf; with the express proviso, however, that the rights pertaining to Honduras as coparcener in those portions are not affected by that decision." [88]

II. International case-law

48. The important decision of the Central American Court of Justice in the case relating to the Gulf of Fonseca has already been mentioned (paras. 44-47 above).

49. Another important case having a bearing on historic bays was the North Atlantic Coast Fisheries Arbitration between the United Kingdom and the United States; the award, dated 7 September 1910, says:

"But the tribunal, while recognizing that conventions and established usage might be considered as the basis for claiming as territorial those bays on this ground might be called historic bays, and that such claims should be held valid in the absence of any principle of international law on the subject. . . ." [89]

While the award mentioned historic bays incidentally, only Dr. Drago, in his dissenting opinion, considered the question of those bays at more length and tried to identify their characteristic features. Dr. Drago's views on the question are given elsewhere in this paper, in the section on opinions of learned authors (*infra*, para. 92).

50. In the Fisheries Case between the United Kingdom and Norway, decided by the International Court of Justice in its judgement of 18 December 1951, the theory of historic bays played an important part. The parties dealt with it both in their written and in their oral statements. And the judgement of the Court, although not treating the theory as a major issue, devotes many pages to it. Nor does the theory receive less prominence in the separate or dissenting opinions of certain judges. In this section, only the relevant portions of the judgement will be cited.

51. The first noteworthy point is that the Court was asked to rule, not on the territoriality of any particular bay or of specific maritime areas, but on a system of delimitation. The system laid down by the Norwegian Royal Decree of 12 July 1935 included in the internal waters of Norway certain sea areas which, in the view of the United Kingdom, were part of the high seas. The issue in dispute between the two parties was whether this system of delimitation was in conformity with the applicable rules of international law. And it was principally by relying on these rules for guidance that the Court endeavoured to resolve the issue. While basing its conclusions on the principles of general international law the Court did not, however, fail to make certain statements concerning the theory of historic rights.

52. In the course of the proceedings, both parties referred to the notion of historic title, but viewing it differently. The judgement, in the recital of facts, mentions this divergence of views.

53. The Norwegian Decree of 12 July 1935 sets out in the preamble the considerations on which its provisions on delimitation are based: [91]

"(1) Well-established national titles of right";

"(2) The geographical conditions prevailing on the Norwegian coasts";

"(3) The safeguard of the vital interests of the inhabitants of the northernmost parts of the country".

The Decree "further relies on the Royal Decrees of 22 February 1812, 16 October 1869, 5 January 1881 and 9 September 1889".

54. Norway put forward the 1935 Decree as the application of a traditional system of delimitation, which that country claimed to be in conformity with international law. Norway did not rely upon history "to justify exceptional rights, to claim areas of sea which the general law would deny"; it invoked history, together with other factors, to justify the way in which it applied the general law. [92]

55. "This conception of an historic title", said the Court, "is in consonance with the Norwegian Government's understanding of the general rules of international law. In its view, these rules of international law take into account the diversity of facts and, therefore, concede that the drawing of base lines must be adapted to the special conditions obtaining in different regions." [93]

56. The United Kingdom also referred to the notion of historic titles, but considered such titles as derogations from general international law. In its opinion, Norway could justify its claim to part of the waters in dispute "on the ground that she has exercised the necessary jurisdiction over them for a long period without opposition from other States, a kind of *possessio longi temporis*, with the result that her jurisdiction over these waters must now be recognized although it constitutes a derogation from the rules in force. Norwegian sovereignty over these waters would constitute an exception, historic titles justifying situations which would otherwise be in conflict with international law". [94]

57. The waters which, in the British view, Norway was entitled to claim on historic grounds, are the subject of Conclusions Nos. 5, 9 (*a*) and 11, and Alternative Conclusion II, presented by the Agent of the United Kingdom Government at the end of his oral reply. The

[88] *Ibid.*, p. 716.

[89] Scott, *Hague Court Reports*, First Series, New York, 1916, p. 185.

[91] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951: I.C.J. Reports* (1951), p. 125.

[92] *Ibid.*, p. 133.

[93] *Ibid.*

[94] *Ibid.*, pp. 130-131.

waters in question should, he argued, be regarded either as internal or as territorial waters. The text of these Conclusions is here cited in full: [95]

"(5) That Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in international law (see No. (6) below), whether the proper closing line of the indentation is more or less than ten sea miles long.

"(9)(*a*) That Norway is entitled to claim as Norwegian territorial waters, on historic grounds, all the waters of the fjords and sunds which have the character of legal straits.

"(11) That Norway, by reason of her historic title to fjords and sunds (see Nos. (5) and (9)(*a*) above), is entitled to claim, either as internal or as territorial waters, the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, and whether these areas are internal or territorial waters, the principles of Nos. (6), (7), (8) and (9)(*b*) must be applied to indentations in the island fringe and to indentations between the island fringe and the mainland — those areas which lie in indentations having the character of bays, and within the proper closing lines thereof, being deemed to be internal waters; and those areas which lie in indentations having the character of legal straits, and within the proper limits thereof, being deemed to be territorial waters."

[Second Alternative Conclusion] "II. That Norway, by reason of her historic title to fjords and sunds, is entitled to claim as internal waters the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, the principles of Nos. (6) and (7) above must be applied to the indentations in the island fringe and to the indentations between the island fringe and the mainland — those areas which lie in indentations having the character of bays, and within the proper closing lines thereof, being deemed to lie between the island fringe and the mainland."

58. The Court defined "historic waters" in these terms:

"By 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title." [96]

59. After stressing the special character of the Norwegian coast, the Court noted that:

"in these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing". [97]

60. The Court then considered whether the straight baselines method — the distinctive feature of the Norwegian system of delimitation which, as applied to the Norwegian coast, was approved of by the Court — was applicable to certain sea areas not possessing the character of bays. The Court said:

"It has been contended, on behalf of the United Kingdom, that Norway may draw straight lines only across bays. The Court is unable to share this view. If the belt of territorial waters must follow the outer line of the '*skjaergaard*', and if the method of straight baselines must be admitted in certain cases, there is no valid reason to draw them only across bays, as in Eastern Finnmark, and not also to draw them between islands, islets and rocks, across the sea areas separating them, even when such areas do not fall within the conception of a bay. It is sufficient that they should be situated between the island formations of the '*skjaergaard*', *inter fauces terrarum*." [98]

61. The court likewise rejected the contention that the maximum permissible length of straight baselines was ten nautical miles:

"... although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law." [99]

62. The Court did not look upon the Norwegian system of delimitation as exceptional but as the application of general international law to a specific case:

"Furthermore, apart from any question of limiting the lines to ten miles, it may be that several lines can be envisaged. In such cases the coastal State would seem to be in the best position to appraise the local conditions dictating the selection.

"Consequently, the Court is unable to share the view of the United Kingdom Government, that 'Norway, in the matter of baselines, now claims recognition of an exceptional system'. As will be shown later, all that the Court can see therein is the application of general international law to a specific case." [100]

63. On the other hand, the Court said that the delimitation of sea areas "has always an international aspect"; it cannot be dependent merely upon the will of the coastal State. Although it is true that the coastal State is alone competent to undertake it, it is equally true that the validity of the delimitation with regard to other States depends upon international law. Accordingly, the Court indicated certain basic considerations that "bring to light certain criteria which, though not necessarily precise, can provide courts with an adequate basis for their decisions, which can be adapted to the diverse facts in question". [101]

"Among these considerations, some reference must be made to the close dependence of the territorial sea upon the land domain. It is the land which confers upon the coastal State a right to the waters off its coasts. It follows that while such a State must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements, the drawing of baselines must not depart to any appreciable extent from the general direction of the coast.

"Another fundamental consideration, of particular importance in this case, is the more or less close relationship existing between certain sea areas and the land formations which divide or surround them. The real question raised in the choice of baselines is in effect whether certain sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters. This idea, which is at the basis of the determination of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration of which is as unusual as that of Norway.

"Finally, there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the

[95] *Ibid.*, pp. 121-123.

[96] *Ibid.*, p. 130.

[97] *Ibid.*, p. 128.

[98] *Ibid.*, p. 130.

[99] *Ibid.*, p. 131.

[100] *Ibid.*

[101] *Ibid.*, p. 133.

reality and importance of which are clearly evidenced by a long usage." [72]

64. After noting the existence and consolidation of the Norwegian system of delimitation, the origins of which go back to 1812, the Court found "that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States".

65. The passages in the Court's judgement which deal with the continuity or consistency of the system of delimitation are here cited in full:

"The United Kingdom Government has, however, sought to show that the Norwegian Government has not consistently followed the principles of delimitation which, it claims, form its system, and that it has admitted by implication that some other method would be necessary to comply with international law. The documents to which the Agent of the Government of the United Kingdom principally referred at the hearing on 20 October 1951, relate to the period between 1906 and 1908, the period in which British trawlers made their first appearance off the Norwegian coast, and which, therefore, merits particular attention.

"The United Kingdom Government pointed out that the law of 2 June 1906, which prohibited fishing by foreigners, merely forbade fishing in 'Norwegian territorial waters', and it deduced from the very general character of this reference that no definite system existed. The Court is unable to accept this interpretation, as the object of the law was to renew the prohibition against fishing and not to undertake a precise delimitation of the territorial sea.

"The second document relied upon by the United Kingdom Government is a letter dated 24 March 1908, from the Minister for Foreign Affairs to the Minister of National Defence. The United Kingdom Government thought that this latter indicated an adherence by Norway to the low-water mark rule contrary to the present Norwegian position. This interpretation cannot be accepted; it rests upon a confusion between the low-water mark rule as understood by the United Kingdom, which required that all the sinuosities of the coast line at low tide should be followed, and the general practice of selecting the low-tide mark rather than that of the high tide for measuring the extent of the territorial sea.

"The third document referred to is a Note, dated 11 November 1908, from the Norwegian Minister for Foreign Affairs to the French Chargé d'Affaires at Christiania, in reply to a request for information as to whether Norway had modified the limits of her territorial waters. In it the Minister said: 'Interpreting Norwegian regulations in this matter, whilst at the same time conforming to the general rule of the Law of Nations, this Ministry gave its opinion that the distance from the coast should be measured from the low-water mark and that every inlet not continuously covered by the sea should be reckoned as a starting-point.' The United Kingdom Government argued that by the reference to 'the general rule of the Law of Nations', instead of to its own system of delimitation entailing the use of straight lines, and, furthermore, by its statement that 'every inlet not continuously covered by the sea should be reckoned as a starting-point', the Norwegian Government had completely departed from what it today describes as its system.

"It must be remembered that the request for information to which the Norwegian Government was replying related not to the use of straight lines, but to the breadth of Norwegian territorial waters. The point of the Norwegian Government's reply was that there had been no modification in the Norwegian legislation. Moreover, it is impossible to rely upon a few words taken from a single note to draw the conclusion that the Norwegian Government had abandoned a position which its earlier official documents had clearly indicated.

"The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in Norwegian practice. They may be easily understood in the light of the variety of the facts and conditions prevailing in the long period which has elapsed since 1812, and are not such as to modify the conclusions reached by the Court.

"In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose." [73]

66. And in the passage which follows the Court found that the Norwegian system had not encountered "any objection from foreign States":

"Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States.

"The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact. For a period of more than sixty years the United Kingdom Government itself in no way contested it. One cannot indeed consider as raising objections the discussions to which the "Lord Roberts" incident gave rise in 1911, for the controversy which arose in this connexion related to two questions, that of the four-mile limit, and that of Norwegian sovereignty over the Varangerfjord, both of which were unconnected with the position of baselines. It would appear that it was only in its Memorandum of 27 July 1933 that the United Kingdom made a formal and definite protest on this point.

"The United Kingdom Government has argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis of an historic title enforceable against it. The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government. Nor, knowing of it, could it have been under any misapprehension as to the significance of its terms, which clearly described it as constituting the application of a system. The same observation applies *a fortiori* to the Decree of 1889, relating to the delimitation of Romsdal and Nordmöre, which must have appeared to the United Kingdom as a reiterated manifestation of the Norwegian practice.

"Norway's attitude with regard to the North Sea Fisheries (Police) Convention of 1882 is a further fact which must at once have attracted the attention of Great Britain. There is scarcely any fisheries convention of greater importance to the coastal States of the North Sea or of greater interest to Great Britain. Norway's refusal to adhere to this Convention clearly raised the question of the delimitation of her maritime domain, especially with regard to bays, the question of their delimitation by means of straight lines, of which Norway challenged the

[72] *Ibid.*

[73] *Ibid.*, pp. 137-138.

maximum length adopted in the Convention. Having regard to the fact that, a few years before, the delimitation of Sunnmöre by the 1869 Decree had been presented as an application of the Norwegian system, one cannot avoid the conclusion that, from that time on, all the elements of the problem of Norwegian coastal waters had been clearly stated. The steps subsequently taken by Great Britain to secure Norway's adherence to the Convention clearly show that she was aware of and interested in the question.

"The Court notes that, in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.

"The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom." [74]

67. The Court accordingly arrived at the conclusion:

"... that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast; that, even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of Governments bears witness to the fact that they did not consider it to be contrary to international law". [75]

68. The Court proceeded to apply the principles thus set out to certain sectors of the Norwegian coast. The United Kingdom Government had contended that certain baselines prescribed by the Norwegian Decree of 1935 did not follow the general direction of the coast or that they did not respect the natural connexion existing between certain sea areas and the land formations separating or surrounding them. These objectives related more particularly to two sectors: the sector of Svaerholtnavet and that of Lopphavet.

69. With regard to the former, the Court said:

"... The United Kingdom Government denies that the basin so delimited has the character of a bay. Its argument is founded on a geographical consideration. In its opinion, the calculation of the basin's penetration inland must stop at the tip of the Svaerholt peninsula (Svaerholtklubben). The penetration inland thus obtained being only 11.5 sea miles, as against 38.6 miles of breadth at the entrance, it is alleged that the basin in question does not have the character of a bay. The Court is unable to share this view. It considers that the basin in question must be contemplated in the light of all the geographical factors involved. The fact that a peninsula juts out and forms two wide fjords, the Lakse[fjord and the Porsanger]fjord, cannot deprive the basin of the character of a bay. It is the distances between the disputed baseline and the most inland point of these fjords, fifty and seventy-five sea miles respectively, which must be taken into account in appreciating the proportion between the penetration inland and the width at the mouth. The Court concluded that Svaerholthavet has the character of a bay." [76]

70. Of the sector of Lopphavet, the Court said:

"... The Lopphavet basin constitutes an ill-defined geographic whole. It cannot be regarded as having the character of a bay. It is made up of an extensive area of water dotted with large islands which are separated by inlets that terminate in the various fjords. The baseline has been challenged on the ground that it does not respect the general direction of the coast. It should be observed that, however justified the rule in question may be, it is devoid of any mathematical precision. In order properly to apply the rule, regard must be had for the relation between the deviation complained of and what, according to the terms of the rule, must be regarded as the *general* direction of the coast. Therefore, one cannot confine oneself to examining one sector of the coast alone, except in a case of manifest abuse; nor can one rely on the impression that may be gathered from a large-scale chart of this sector alone. In the case in point, the divergence between the base line and the land formations is not such that it is a distortion of the general direction of the Norwegian coast." [77]

71. The Court then went on to say:

"Even if it were considered that in the sector under review the deviation was too pronounced, it must be pointed out that the Norwegian Government has relied upon an historic title clearly referable to the waters of Lopphavet, namely, the exclusive privilege to fish and hunt whales granted at the end of the 17th century to Lt.-Commander Erich Lorch under a number of licences which show, *inter alia*, that the water situated in the vicinity of the sunken rock of Gjesbaaen or Gjesboene and the fishing grounds pertaining thereto were regarded as falling exclusively within Norwegian sovereignty. But it may be observed that the fishing grounds here referred to are made up of two banks, one of which, the Indre Gjesboene, is situated between the baseline and the limit reserved for fishing, whereas the other, the Ytre Gjesboene, is situated further to seaward and beyond the fishing limit laid down in the 1935 Decree.

"These ancient concessions tend to confirm the Norwegian Government's contention that the fisheries zone reserved before 1812 was in fact much more extensive that the one delimited in 1935. It is suggested that it included all fishing banks from which land was visible, the range of vision being, as is recognized by the United Kingdom Government, the principle of delimitation in force at that time. The Court considers that, although it is not always clear to what specific areas they apply, the historical data produced in support of this contention by the Norwegian Government lend some weight to the idea of survival of traditional rights reserved to the inhabitants of the Kingdom over fishing grounds included in the 1935 delimitation, particularly in the case of Lopphavet. Such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within the bounds of what is moderate and reasonable." [78]

72. There remains one further important point to be noted in the Court's judgement: this is the question of the status of a part of the waters of the *skjaergaard*, which the United Kingdom contended should constitute "territorial waters" and not "internal waters". These are, among others, the waters of the navigational route known as the Indreleia. The United Kingdom argued that the waters of this navigational route constituted a strait in the legal sense and, as such, should be treated as territorial waters. The Court observed:

"... that the Indreleia is not a strait at all, but rather a navigational route prepared as such by means of artificial aids to navigation provided by Norway. In these circumstances the Court is unable to accept the views that the Indreleia, for the purposes of the present case, has a status different from that of the other waters included in the *skjaergaard*." [79]

[74] *Ibid.*, pp. 138-139.

[75] *Ibid.*, p. 139.

[76] *Ibid.*, p. 141.

[77] *Ibid.*, pp. 141-142.

[78] *Ibid.*, p. 142.

[79] *Ibid.*, p. 132.

III. Draft international codifications of the rules relating to bays

73. The draft codifications concerning the law of the sea prepared since the end of the nineteenth century by learned societies make specific provision for the bays which coastal States may claim as internal waters. The same is true of the draft codifications prepared under the auspices of the League of Nations. The rules formulated in most of these drafts make allowance for historic bays. They do not contain special clauses dealing with historic bays but, in most cases, mention them incidentally, in the form of an exception to the general rule recommended for ordinary bays. Nevertheless, the language used in the clause containing the exception, which differs from one draft to another, may offer some clue to the approach of the authors of the drafts to the theory of historic bays.

Most of the drafts that mention historic bays contemplate only the case of a bay the coasts of which belong to a single State.

A. *Draft codifications prepared by learned societies*

Institute of International Law

74. At its session held in Paris in March 1894, the Institute of International Law adopted a number of rules concerning the definition and the régime of the territorial sea. In its draft article 3, the Institute recognizes the theory of historic bays by using the terms "continuous usage of long standing" (*usage continu et séculaire*):

"*Article 3.* In the case of bays, the territorial sea follows the sinuosities of the coast, except that it is measured from a straight line drawn across the bay at the place nearest the opening toward the sea, where the distance between the two shores of the bay is twelve nautical miles, unless a continued usage of long standing has sanctioned a greater width."[80]

75. However, in the draft regulations concerning the territorial sea in time of peace, adopted by the Institute of International Law at its Stockholm session in August 1928, the theory of historic bays is expressed by the words "international usage":

"*Article 3.* The territorial sea is measured . . . ; in the case of bays, from a straight line drawn across the bay at the place nearest the opening toward the sea, where the distance between the two shores of the bay is ten nautical miles, unless international usage has sanctioned a greater width.

"In the case of bays the coasts of which belong to two or more States, the territorial sea follows the sinuosities of the coast."[81]

76. The first draft of this clause had contained the expression "unchallenged (*incontesté*) international usage". During the debate preceding the adoption of the article, an amendment was proposed for the deletion of the word "unchallenged". The amendment was carried and the word in question was dropped.[82]

[80] *Annuaire de l'Institut de Droit International*, vol. 13 (1894-95), p. 329.

[81] *Ibid.*, vol. 34, Stockholm session, August, 1928, p. 755.

[82] *Ibid.*, pp. 641-642.

International Law Association

77. The draft rules relating to territorial waters, adopted by the International Law Association at its Brussels session in 1895, contain an article 3 which reproduces textually the corresponding clause of the 1894 draft of the Institute of International Law (except that the width of twelve miles is replaced by ten miles).[83]

78. The draft convention submitted in 1926 to the Association's thirty-fourth conference by the committee appointed by the Executive Council to consider, *inter alia*, maritime jurisdiction in time of peace, uses the expression "established usage":

"*Article 7.* With regard to bays and gulfs, territorial waters shall follow the sinuosities of the coast, unless an established usage has sanctioned a greater limit."[84]

79. The draft convention, as amended by the Conference, adopts the same expression, adding the terms "generally recognized by the nations". In addition, it introduces the idea of "occupation" into the saving clause:

"*Article 7.* With regard to bays and gulfs, territorial waters shall follow the sinuosities of the coast, unless an occupation or an established usage generally recognized by the nations has sanctioned a greater limit."[85]

American Institute of International Law

80. Project No. 10, prepared in 1925 by the Commission set up by the American Institute of International Law for the codification of American international law, embodies the theory of historic bays. Article 6 uses the expression "continued and well-established usage":

"*Article 6.* For bays extending into the territory of a single American Republic the territorial sea follows the sinuosities of the coast, except that it is measured from a straight line drawn across the bay at the point nearest the opening into the sea where the two coasts of the bay are separated by a distance of —— marine miles, unless a greater width shall have been sanctioned by continued and well-established usage."[86]

81. The project submitted in 1933 to the Seventh International Conference of American States by the American Institute of International Law expresses the theory of historic bays in the following terms:

"*Article 11.* There are excepted from the provisions of the two foregoing articles, in regard to limits and measure, those bays or estuaries called historic, *viz.* those over which the coastal State or States, or their constituents, have traditionally exercised and maintained their sovereign ownership, either by provisions of internal legislation and jurisdiction, or by deeds or writs of the authorities."[87]

[83] The International Law Association, *Report of the Seventeenth Conference*, 1895, p. 115.

[84] *Ibid.*, *Report of the Thirty-fourth Conference*, 1926, p. 43.

[85] *Ibid.*, p. 102.

[86] *American Journal of International Law*, 1926, Special Supplement, vol. 20, p. 318.

[87] "Project on the Territorial Sea", submitted to the Seventh International Conference of American States, 3 December 1933 (Document for the Use of Delegates, No. 4, pp. 38-41); quoted in *I.C.J. Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951*, vol. III, Norwegian Reply, p. 455; Bustamante, *The Territorial Sea*, 1930, pp. 142-143.

(Article 16 of the project provides that the same rule is to apply to straits).

Kokusaiho-Gakukwai
(Japanese International Law Society)

82. A draft codification adopted in 1926 by Kokusaiho-Gakukwai (The Japanese International Law Society) employs the expression "immemorial usage":

"*Article 2.* In the case of bays and gulfs, the coasts of which belong to the same State, the littoral waters extend seawards at right angles from a straight line drawn across the bay or gulf at the first point nearest the open sea where the width does not exceed ten marine miles, unless a greater width has been established by immemorial usage."[88]

Harvard Research

83. The Harvard Research draft on territorial waters employs the expression "established usage":

"*Article 22.* The provisions of this convention relating to the extent of territorial waters do not preclude the delimitation of territorial waters in particular areas in accordance with established usage."[89]

84. It will be noticed that this article is general in scope, and does not concern bays only. The comment on the article states:

"This article seems necessary because of historic claims made by certain States and acquiesced in by other States with reference to certain bodies or with reference to particular areas of water. The simplest case is that of an historic bay such as Chesapeake Bay or Conception Bay. It seems desirable that the convention should not interfere with historic claims of this kind based upon usage which has been established before this convention comes into force. Such claims may enlarge or diminish the extent of territorial waters. Similarly it seems desirable that it should be recognized that usages with respect to other areas may become established in the future and that well-founded claims may be based upon such established usage.

"A State may have claimed for all of its marginal seas a different measure from that which is established by this convention. Some States for instance have for many years claimed four miles as the limit of their marginal seas. This article is not designed to protect such a general claim made by a State with reference to all of its marginal seas. However, in a particular area an established usage might be proved which would entitle a State to include a wider area in its territorial waters than three miles of marginal sea."

B. *Draft codifications prepared under the auspices of the League of Nations*

1. *Committee of Experts for the Progressive Codification of International Law*[90]

(*a*) *Draft convention prepared by Mr. Schücking*

85. This draft uses the same terms as the 1894 draft of the Institute of International Law:

"*Article 4. Bays.* In the case of bays which are bordered by the territory of a single State, the territorial sea shall follow the sinuosities of the coast, except that it shall be measured from a straight line drawn across the bay at the part nearest to the opening towards the sea, where the distance between the two shores of the bay is twelve marine miles, unless a greater distance has been established by continuous and immemorial usage. . . ."[91]

(*b*) *Draft convention amended by Mr. Schücking in consequence of the discussion in the Committee of Experts*

86. The text of article 4 of the amended draft is similar to that of the original draft prepared by the rapporteur, except that the width of twelve miles is replaced by ten miles. In addition, the amended text of article 4 expressly provides that the waters of the bays defined in that article "are to be assimilated to internal waters".[92]

2. *Conference on the Codification of International Law* (1930)

(*a*) *Preparatory Committee*[93]

87. Basis of Discussion No. 8 prepared by this Committee was worded as follows:

"The belt of territorial waters shall be measured from a straight line drawn across the entrance of a bay, whatever its breadth may be, if by usage the bay is subject to the exclusive authority of the coastal State; the onus of proving such usage is upon the coastal State."[94]

The above provision relates only to historic bays, Basis of Discussion No. 7 being concerned with ordinary bays.[95]

[88] J. Mochot, *Régime des baies et des golfes en droit international*, Paris, 1938, p. 144.

[89] *Research in International Law, Harvard Law School (Nationality, Responsibility of States, Territorial Waters)*, 1929, p. 288.

[90] This Committee was convened under a resolution adopted by the Assembly of the League of Nations on 22 September 1924.

At its second session in January 1926, the Committee adopted seven questionnaires on the subjects which, in its opinion, were sufficiently ripe for international regulation. Questionnaire No. 2 dealt with territorial waters. On 29 January 1926, the Committee circulated to Governments for their comments a Sub-Committee's report on territorial waters (questionnaire No. 2). This report included, *inter alia* (1) a memorandum by Mr. Schücking, rapporteur of the Sub-Committee, with a draft convention annexed; and (2) the draft convention amended by Mr. Schücking in consequence of the discussion in the Committee of Experts.

[91] Ser. L.o.N.P. 1927, v. 1, p. 58.

[92] *Ibid.*, p. 72.

[93] This Committee was appointed under a resolution adopted by the Council of the League of Nations on 28 September 1927, with the terms of reference contained in a resolution of 27 September 1927 of the Assembly. At its session held at Geneva from 28 January to 17 February 1929, the Preparatory Committee examined the replies of Governments to the request for information upon the three questions on the programme of the proposed Conference: territorial waters, etc. As a result of that examination, the Committee drew up bases of discussion for the use of the Conference.

[94] Ser. L.o.N.P. 1929, v. 2, p. 45.

[95] Basis of Discussion No. 7: "In the case of bays the coasts of which belong to a single State, the belt of territorial waters shall be measured from a straight line drawn across the opening of the bay. If the opening of the bay is more than ten miles wide, the line shall be drawn at the nearest point to the entrance at which the opening does not exceed ten miles." (*Ibid.*)

88. In its observation, the Preparatory Committee noted that:

"The government replies appear to indicate that agreement can easily be reached to extend the same method of calculation to bays of a greater breadth than ten miles where the coastal State is in a position to prove the existence of a usage to that effect (historic bays)."[96]

89. Bases of Discussion Nos. 7 and 8 concern bays the coasts of which belong to a single State. Basis of Discussion No. 9 concerns bays the coasts of which belong to two or more States:

"If two or more States touch the coast of a bay or estuary of which the opening does not exceed ten miles, the territorial waters of each coastal State are measured from the line of low-water mark along the coast."[97]

(b) Report of the Second Committee

90. In its report to the Conference, the Second Committee (Mr. François, Rapporteur), which had been appointed to study the Bases of Discussion drawn up by the Preparatory Committee, said:

"One difficulty which the Committee encountered in the course of its examination of several points of its agenda was that the establishment of general rules with regard to the belt of the territorial sea would, in theory at any rate, effect an inevitable change in the existing status of certain areas of water. In this connexion, it is almost unnecessary to mention the bays known as 'historic bays'; and the problem is besides by no means confined to bays, but arises in the case of other areas of water also. The work of codification could not affect any rights which States may possess over certain parts of their coastal sea, and nothing, therefore, either in this report or in its appendices, can be open to that interpretation."[98]

IV. Opinions of learned authors and of Governments

A. *Opinions of learned authors*

91. The preceding section explained how the subject of historic bays has been treated by expert bodies. The present section will cite opinions expressed on historic bays by selected authors either in personal publications, or in connexion with judicial decisions or in the course of collective efforts at codification. As far as possible, only those opinions will be cited which reflect approval or disapproval of the theory of historic bays. The views of authors on other aspects of the problem will be taken into account in part II of this memorandum.

92. The authors cited are listed in the chronological order of the publication of their works.

Vattel (1758):[99]

"All that we have said regarding the parts of the sea adjoining the coast is true more particularly and *a fortiori* of roadsteads, bays, and straits, which lend themselves even more easily to occupation and are of greater importance to the country's safety. I am only speaking, however, of bays and straits which are small in size, and not of those large areas of the sea that are sometimes so described, such as Hudson Bay or the Straits of Magellan, where no *imperium*, much less a right of ownership, is exercisable. A bay which can be defended at its entrance can be occupied and subjected to the Laws of the Sovereign; indeed, it should be so occupied, for any such place is much more likely to attract the trespasser than a coast open to the winds and the turbulence of the waves."

Kent (1878):[100]

"It is difficult to draw any precise or determinate conclusion, amidst the variety of opinions, as to the distance to which a State may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbours, gulfs, bays and estuaries, and over which its jurisdiction unquestionably extends. . . . The executive authority of that country [the United States], in 1793, considered the whole of Delaware Bay to be within its territorial jurisdiction; resting its claims upon those authorities which admit that gulfs, channels, and arms of the sea belong to the people with whose lands they are encompassed; and it was intimated that the law of nations would justify the United States in attaching to their coasts an extent into the sea, beyond the reach of cannon-shot.

"Considering the great extent of the line of the American coasts, their writers contend that they have a right to claim, for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; nor would it be unreasonable, as they say, to assume, for domestic purposes connected with their safety and welfare, the control of the waters on their coasts, though included within lines stretching from quite distant headlands; as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauck Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi. It is certain that their Government would be disposed to view with some uneasiness and sensibility, in the case of war between other maritime Powers, the use of the waters of their coast, far beyond the reach of cannon-shot, as cruising ground for belligerent purposes. In 1793 the Government of the United States thought they were entitled, in reason, to as broad a margin of protected navigation, as any nation whatever, though at that time they did not positively insist upon more than the distance of a marine league from the sea shores; and, in 1806, they thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf Stream, to expect an immunity from belligerent warfare, for the space between that limit and the American shore. It ought, at least, to be insisted, they urged, that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory, and that no belligerent right should be exercised within 'the chambers formed by headlands, or any where at sea within the distance of four leagues, or from a right line from one headland to another.'"

R. Phillimore (1879):[101]

"Besides the rights of property and jurisdiction within the limit of cannon-shot from the shore, there are certain portions of the sea which, though they exceed this verge, may, under special circumstances, be prescribed for. Maritime territorial rights extend, as a general rule, over arms of the sea, bays, gulfs, estuaries which are enclosed but not entirely surrounded by lands belonging to one and the same State . . ."

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[96] *Ibid.*

[97] *Ibid.*

[98] Ser. L.o.N.P. 1930.V.14, p. 125.

[99] *Le Droit des Gens*, 1758, Carnegie Institution of Washington, 1916, p. 251.

[100] *Kent's Commentary*, 2nd ed. (1878), pp. 100-102.

[101] *Commentaries upon International Law*, vol. I, 3rd ed. 1879, p. 284.

Hall (1880):[102]

"It seems to be generally thought that straits are subject to the same rule as the open sea; so that when they are more than six miles wide the space in the centre which lies outside the limit of a marine league is free, and that when they are less than six miles wide they are wholly within the territory of the State or States to which their shores belong. This doctrine however is scarcely consistent with the view, which is also generally taken, that gulfs, of a greater or less size in the opinion of different writers, when running into the territory of a single State, can be included within its territorial waters; perhaps also it is not in harmony with the actual practice with respect to waters of the latter kind. . . . In principle it is difficult to separate gulfs and straits from one another; the reason which is given for conceding a larger right of appropriation in the case of the former than of the latter, *viz.*, that all nations are interested in the freedom of straits, being meaningless unless it be granted that the State can prohibit the innocent navigation of such of its territorial waters as vessels may pass over going from one foreign place to another. If that could be done, it might be necessary to impose a special restriction upon the appropriation of waters which by their position are likely to be so used. Such however not being the case in fact, it is the power of control which has alone to be looked to; and the power of exercising control is not less when water of a given breadth is terminated at both ends by water than when it merely runs into the land. Of practice there is a curious deficiency, and there is nothing to show how many of the claims to gulfs and bays which still find their place in the books are more than nominally alive. It is scarcely possible to say anything more definite than that, while on the one hand it may be doubted whether any State would now seriously assert the right of property over broad straits or gulfs of considerable size and wide entrance, there is on the other hand nothing in the conditions of valid maritime occupation to prevent the establishment of a claim either to basins of considerable area, if approached by narrow entrances such as those of the Zuyder Zee, or to large gulfs which, in proportion to the width of their mouth, run deeply into the land, even when so large as the Bay of Fundy, or still more to small bays, such as that of Cancale."

A. Chrétien (1893):[103]

"I only recognize as integral parts of the maritime territory of the State ports, harbours and roadsteads, bays and small gulfs which penetrate into the land domain and man-made waterways which run across it and connect two seas.

. . .

"In cases where the entrance to a gulf or bay is sufficiently narrow to be wholly commanded by the cannon of the State holding the two shores, and where, in addition, the size of the bay or gulf is not considerable, the waters therein should be assimilated to ports, harbours and roadsteads indented into the land territory of a State. There are the same reasons for regarding them as subject to the complete and absolute sovereignty of the coastal State. This applies to the Bay of Brest in France, to Jade Bay, the Frisches Haff and the Kurisches Haff in Germany, to the Zuyder Zee in Holland, to the Danish and Norwegian fjords, and to other similar indentations.

"Gulfs and bays of large size should be treated either as non-closed internal seas or as open seas, depending on whether the width of the entrance is smaller or larger than twice the traditional range of cannon, that is to say six nautical miles of sixty to a degree. Consequently, the Gulf of Mexico, the Bay of Biscay and the Gulf of Lions are open seas. The application of these principles to the Gulfs of Bothnia and of Finland in Europe and to Delaware, Hudson and Conception Bays in America would normally lead to the conclusion that they also are free waters. This solution, however, is not accepted by the Russian, American and English Governments, which declare them to be wholly territorial waters."

Barclay (1894-95):[104]

In explaining the exception contained in the final clause of article 3 of the 1894 draft of the Institute of International Law (*supra*, para. 74) this author states:

". . . Bays are generally not used for navigation between countries other than the coastal countries. Headlands keep them outside the open routes, separated from the high seas by a clearly defined line. There are, however, many bays which are more than ten or even sixteen miles wide and yet must necessarily be regarded by reason of their position, as under the absolute sovereignty of the coastal State. This is true of the firths of Scotland. The Bay of Cancale is seventeen miles wide; in Chaleur Bay, in Canada, the width is sixteen miles. All these bays are regarded as under the exclusive dominion of the coastal State. It is thus necessary to establish the principle that the status of a bay differs from that of the territorial sea proper."

A. Rivier (1896):[105]

". . . the portions of the sea, or the seas, which, by reason of their configuration, are called gulfs or bays, are territorial if they border on the territory of a single State and their entrance is sufficiently narrow to be wholly within the range of the coastal batteries. But where there are several coastal States, the gulf is an open sea regardless of its width at the entrance. A gulf is also an open sea, even if it is surrounded by a single State, if its entrance is too wide to be dominated from the coast. This is generally admitted to be the case where the distance between the two shores exceeds ten nautical miles.

"Territorial gulfs are governed by the principles of law which also govern internal seas not designated as gulfs. The littoral sea begins where the territorial gulf ends.

. . .

"The Frisches Haff and the Kurisches Haff are German, as are the Gulf of Stettin and Jade Bay. The Gulf of Riga is Russian. England has claimed territorial jurisdiction over Conception Bay (Newfoundland) and the Bay of Fundy (Canada) . . ."

"The Gulf of Bothnia is open sea, as are also the Gulf of Finland — although Russia claims the latter to be Russian — and Delaware and Hudson Bays, despite the contrary opinion of the American and the English. The Behring Sea is open sea."

Drago (1910):[106]

In his dissenting opinion in the North Atlantic Coast Fisheries Arbitration between Great Britain and the United States (1910) (*supra*, para. 49), Dr. Drago states:

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[102] *International Law*, 1880, pp. 127-129.

[103] *Principes de Droit international public*, Paris, 1893, pp. 100-103.

[104] *Annuaire de l'Institut de droit international*, vol. 13 (1894-95) p. 147.

[105] *Principes du Droit des Gens*, vol. 1, Paris (1896), pp. 154-155.

[106] Scott, *op. cit.*, pp. 199-200.

"So it may be safely asserted that a certain class of bays, which might be properly called the historical bays, such as Chesapeake Bay and Delaware Bay in North America and the great estuary of the River Plate in South America, form a class distinct and apart and undoubtedly belong to the littoral country, whatever be their depth of penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular circumstances such as geographical configuration, immemorial usage and above all, the requirements of self-defence, justify such a pretension. The rights of Great Britain over the bays of Conception, Chaleur and Miramichi are of this description..."

Epitacio Pessôa (1910): [107]

This author's draft code of public international law, submitted to the Commission of Jurists of Rio de Janeiro in 1910, admits the theory of historic bays in these terms:

"Article 54. In gulfs and bays, the territorial sea shall be measured from a straight line drawn between the two extreme points at the narrowest part of the mouth; if this part has a width exceeding ten miles, the measurement shall be taken in conformity with the preceding article and with due regard to acquired rights."

Westlake (1910): [108]

"But although this is the general rule, it often meets with an exception in the case of bays which penetrate deep into the land and are called gulfs. Many of these are recognized by immemorial usage as territorial seas of the States into which they penetrate, notwithstanding that their entrance is wider than the general rule for bays would give as a limit to such appropriation. Examples are the Bay of Conception in Newfoundland, penetrating forty miles into the land and being fifteen miles in average breadth, which is wholly British, Chesapeake and Delaware Bays, which belong to the United States, and the Bay of Cancale, seventeen miles wide, which belongs to France. Similar exceptions to those admitted for gulfs were formerly claimed for many comparatively shallow bays of great width, for example those on the coast of England from Orfordness to the North Foreland and from Beachy Head to Dunnose, which, together with the whole of the Bristol Channel and various other stretches of sea bordering on the British Isles were claimed under the name of the King's Chambers. But it is only in the case of a true gulf that the possibility of occupation can be so real as to furnish a valid ground for the assumption of sovereignty, and even in that case the geographical features which may warrant the assumption are too incapable of exact definition to allow of the claim being brought to any other test than that of accepted usage. It is sometimes said and may be historically true that all sovereignty now enjoyed over the littoral sea or certain gulfs is the remnant of the vast claims which, as we have seen, were once made to sovereignty over the open sea and which it is held have been gradually reduced to a tolerable measure through such intermediate stages as that of the King's Chambers; and the impossibility of putting the claim to gulfs in a definite general form may be thought favourable to that view. None the less however the rights which are now admitted stand on a basis clear and solid enough to distinguish and support them."

Fauchille (1925): [109]

"If the practice of many States thus seems to conflict with the principle, which today seems to predominate among the authorities and in treaty-made law, that the only territorial gulfs and bays are those which have an entrance not exceeding ten miles in width, many authors and the statutes of some States recognize that this principle should suffer at least one exception. According to these, there exist certain gulfs and bays which, despite their great width, must be declared under the sovereignty of the State which surrounds them. These gulfs and bays are what are called *historic* or *vital* bays, as distinct from others which are referred to as *common* or *ordinary* bays. What exactly is the correct definition of a historic or vital bay? It is one of the large gulfs or bays the territorial character of which has been recognized by long-established usage and undisputed custom..."

P. C. Jessup (1927): [110]

"Turning to the second point raised above, — namely, prescriptive rights, — one is forced to the rather unsatisfactory conclusion that for large bays each case should be determined on its own merits and that the status of any particular bay more than six miles wide rests upon the success with which the littoral State has succeeded in pressing its claim to entire jurisdiction over that body of water. It will appear below that this general theory in its specific application has been extremely useful and there is no doubt that in so far as already established, it can not be discarded. Where the mouth of a bay is not of very great extent but the bay itself opens up widely well within the body of the country, — as is the case with the Chesapeake and Delaware bays of the United States, — it seems highly proper that the littoral State should have complete authority over the water so lying within its territory. To make such a principle generally useful for universal application, it would practically be necessary for the nations of the world to meet in conference with the assistance of geographic experts and to make a list of all the bays of the world which were to be considered entirely the property of a single country. There seems to be little chance that such a conference could be arranged or that its labours would be successful if it were to be convoked. Holding in abeyance, then, the general rule which is to govern all bays, it must be admitted that there are certain bodies of water to which individual States by general acquiescence or long usage have acquired the absolute right or title."

The same author states in a later passage:

"It is believed that it will appear from a study of this material that no established rule of international law exists as to bays except to the effect that bays not more than six miles wide are deemed territorial waters as well as those to which a nation has established a prescriptive claim. Such a prescriptive claim may be established over bays of great extent; the legality of the claim is to be measured, not by the size of the area affected, but by the definiteness and duration of the assertion and the acquiescence of foreign Powers. The evidence of international practice and usage does not indicate that a claim to a large bay is illegal."

Antonio Sanchez de Bustamante y Sirven (1930): [111]

"A solution is required for the problem of historic bays, by virtue of which the coastal State is recognized the right over them, whatever the extent of their openings. There are many in this case, both great Powers and countries less strong or materially not very great. As is natural, there is a tendency to convert into a *de jure* rule this *de facto* situation."

[107] *A Codificação Americana do Direito Internacional*, vol. III, p. 36.

[108] *International Law*, 2nd ed., Cambridge, 1910, pp. 191-192.

[109] *Traité de droit international public*, vol. I, Paris, 1925, p. 380.

[110] *The Law of Territorial Waters and Maritime Jurisdiction*, 1927, pp. 362-363, 382.

[111] *The Territorial Sea*, New York, 1930, p. 99.

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Gidel (1930-1934): [112]

"The theory of 'historic waters', whatever name it is given, is a necessary theory: in the delimitation of maritime areas, it acts as a sort of safety valve; its rejection would mean the end of all possibility of devising general rules concerning this branch of the public international law of the sea."

G. Scelle (1946-1947): [113]

"Without rejecting the automatic system altogether, Governments have always made a reservation regarding 'historic bays', which are the widest and of the greatest importance to their interests. They contend that these maritime areas which they have always claimed as reserved for their exclusive use and which are, in fact, closed to common traffic by an immemorial usage accepted by other States should be regarded not only as territorial waters but as internal waters. According to this view, then, the claim rests on a form of prescription.

"We believe that there are valid grounds for recognizing prescription as a mode of acquiring rights in international law. Indeed, we think that in the international system prescription is even more fundamental than in municipal systems, inasmuch as it is very generally recognized that prolonged possession of control produces effects in law. In this, as in all primitive legal systems, it is the *occupation* that lies at the root of the title. The essential difference between international law and municipal law in this respect is that in the former the period of prescription is indeterminate and is governed in each case by the test of 'reasonableness'. In any event, the onus is on the claimant State to prove its claim by showing 'immemorial' usage and 'acceptance', at least by implication, as well as the absence of any suspension or interruption."

Pitt-Cobbett (1947): [114]

"Gulfs and bays running into the territory of a single State are also commonly regarded as 'territorial waters' and hence as subject to the sovereignty and jurisdiction of the territorial Power. It is universally admitted that this is so, if the width of the gulf or bay at its point of actual junction with the open sea does not exceed six miles. The North Sea Convention of 1882, already considered, extends this to ten miles. There are, however, territorial bays and gulfs whose entrance largely exceeds this limit. Thus, as we have seen, Conception Bay, with an entrance twenty miles wide, was held to be part of British territory, and Hudson Bay, with an entrance of fifty miles, is also claimed as territorial water by Great Britain. So, too, the United States include in their 'territorial waters' Chesapeake Bay, the entrance to which is twelve miles from headland to headland; Delaware Bay, which is eighteen miles wide; and Cape Cod Bay, which is thirty-two miles wide; as well as other inlets of a similar kind. France, for special reasons, claims the Bay of Cancale, the entrance to which is seventeen miles in width. Norway claims the Varanger Fjord, with an entrance of thirty-two miles, as territorial waters. Such claims would probably be admitted by other States, subject to the body of water in question exhibiting a well marked configuration as a gulf or bay; and perhaps subject also to such claims being confirmed by prescription and acquiescence. But it would not extend to a long curvature of the coast with an open face; or to claims such as those formerly made by the Crown in England as regards the 'Kings Chambers'; or to a claim such as that put forward by the United States in the Behring Sea controversy. So far as such bodies of water are rightly regarded as territorial, they will be subject alike to the sovereignty and jurisdiction of the territorial Power to the same extent and for the same purposes as those already indicated in the case of the littoral or marginal sea."

Higgins and Colombos (1952): [115]

"...The best rule appears to be that in the case of bays bounded by the territory of one and the same State, the ordinary distance of territorial waters should be generally applied and therefore a limit of six marine miles should be recognized to the littoral State. This rule is subject to the exception that on historical or prescriptive grounds, or for reasons based on the special characteristics of a bay, the territorial State is entitled to claim a wider belt of marginal waters, provided that it can show affirmatively that such a claim has been accepted expressly or tacitly by the great majority of other nations."

M. Bourquin (1952): [116]

"...But we should note immediately that it would never be possible to accept it [the ten-mile rule] without qualifying it by important exceptions. Its rigid application would so seriously upset the existing situation that it cannot even be contemplated. The number of bays the opening of which exceeds ten miles and which are nevertheless wholly within the internal waters of the coastal State is considerable. Unless we wish to accuse the States to which they belong of infringing the rules of international law, we must therefore validate their claims by recognizing and exceptional rule."

A. N. Nikolaev (1954): [117]

"In areas containing internal maritime waters or other national waters, the territorial sea is measured from the outer limit of those waters. The internal waters of the USSR include the Sea of Azov, the Gulf of Riga, the White Sea (to the south of a straight line drawn from Cape Svyatoy Nos to Cape Kanin Nos) and Cheskaya Bay (south of a line going from Cape Mikulino to Cape Svyatoy Nos).

"The author of this work is in full agreement with the Soviet scholars who regard as 'historic' and subject to the *régime* of the internal waters of the USSR the seas which form bays in the Siberian coast: the Sea of Kara, the Laptev Sea, the East Siberian Sea and the Chukchi Sea. Many centuries were required by Russian navigators to establish mastery over these seas, which now constitute a national waterway of the Soviet State. Through these seas passes the northern maritime route from Murmansk and Archangel to Vladivostok, which was only opened through the prodigious efforts of our heroic Soviet people. In this connexion, we should also recall the judgement delivered on 18 December 1951 by the International Court of Justice in the dispute between the United Kingdom and Norway: this judgement recognizes that the maritime route of Indreleia, which follows the Norwegian coast and was only rendered navigable by special work executed by Norway, forms part of Norwegian internal waters."

Oppenheim (1955): [118]

"Such gulfs and bays as are enclosed by the land of one and the same littoral State and have an entrance from the sea not

[112] *Op. cit.*, p. 651.

[113] *Droit international public*, 2nd ed., Paris, 1946-47, pp. 435-436.

[114] *Cases on International Law*, 6th ed., 1947, p. 158.

[115] Higgins and Colombos, *The International Law of the Sea*, London, 1943, p. 112. (French text published in 1952.)

[116] *Les baies historiques, Mélanges Georges Sauser-Hall*, 1952, p. 38.

[117] *Problema territorialnykh vod v mezhdunarodnom prave* (1954) pp. 207-208.

[118] *International Law*, 8th ed., 1955, pp. 505-508.

more than six miles wide are certainly territorial; those on the other hand, that have an entrance too wide to be commanded by coast batteries erected on one or both sides of it, even though enclosed by one and the same littoral State, are certainly not territorial. These two propositions may safely be maintained . . .

"Gulfs and bays surrounded by the land of one and the same littoral State whose entrance is so wide that it cannot be commanded by coast batteries, and, further, as a rule,[1] all gulfs and bays enclosed by the land of more than one littoral State, however narrow their entrance may be, are non-territorial. They[2] are parts of the open sea, the marginal belt inside the gulfs and bays excepted. They can never be appropriated; . . ."

[1] "For an exception to the rule, see the next note as to the Gulf of Fonseca."

[2] "... is not uncontested. A few writers — see, for instance, Twiss, i, sec. 181 — assert that narrow gulfs and bays surrounded by the land of two *different* States are territorial, the central line dividing the territorial portions. However, the majority of writers do not accept this opinion, and it would seem that the practice of States likewise rejects it, except in the case of such bays as possess the characteristics of a closed sea. Thus, in the case of *San Salvador v. Nicaragua*, the International Court of the Central American Republics (*A.J.*, 11 (1917) pp. 693, 706-717) decided in 1917 that, taking into consideration the geographical and historical conditions as well as its situation, extent, and configuration, the Gulf of Fonseca must be regarded as 'an historic bay possessed of the characteristics of a closed sea', and that it therefore was part of the territories of San Salvador, Honduras and Nicaragua. The decision of this Court has, of course, only force with regard to the three Central American States concerned; but the United States acknowledges the territorial character of this Gulf. The attitude of other States is not known.

"As regards the Bay of Fundy, see the *Schooner Washington*, British-American Claims Commission, 1853-1856. Report of Decisions, page 170; Scott, *Cases*, p. 229."

G. Balladore Pallieri (1956):[110]

"As a further exception [to the foregoing principle], some States have maintained or acquired sovereignty of certain bays known as 'historic' bays. These are often quite spacious bays, the mouth being sometimes tens of miles wide, which certainly cannot be considered as part of the territorial sea on the basis of the rules governing that sea which will be set out hereunder. Claims made by States to sovereignty over such bays have thus a totally different basis and must be considered as a last and somewhat pale remnant of the ancient claim to sovereignty over the high seas. The legal basis of each of these claims to a 'historic' bay is constituted by continued usage with the explicit or implicit consent of the members of the international community. As we shall soon see, however, these are exceptional departures which do not in any way detract from the validity of the general principle [that the sea cannot form the subject of an act of appropriation]. Furthermore, these exceptions are progressively disappearing . . . At present, only the following maritime areas appear to remain subject to sovereignty as an exception to the general principle: Conception and Chaleur Bays (Canada); Chesapeake and Delaware Bays, Monterey Bay and Long Island Sound (United States of America); the Bays of Fundy and Miramichi; Cancale or Granville Bay; the Bristol Channel (United Kingdom); Vestfjord (Norway); the Gulf of Tunis (Tunisia); the Gulf of Fonseca (Costa Rica, Honduras, Nicaragua and El Salvador); and the Zuyder Zee (Netherlands). In addition, the International Court has declared (judgement of 18 December 1951) that, under a recently established usage, Norway is authorized to measure its territorial sea from a baseline which is different from the normal baseline and by virtue of which it has more extensive sovereign rights over maritime areas."

[110] *Diritto Internazionale Pubblico*, 7th ed. (revised) (1956), pp. 377-378.

B. *Opinions of Governments*

93. Certain Governments expressed their opinion on the subject of historic bays in their replies to the list of points prepared by the Preparatory Committee of the Codification Conference of 1930 (*supra*, para. 87):

Australia:[120]

"There are certain historic bays whose width exceeds six or even ten miles which are regarded by general acquiescence as territorial waters. In these cases, the coastal belt of territorial waters is measured from a baseline drawn across the bay at the point so recognized as being the limits of national territory. In the case of bays whose coasts belong to two or more States, territorial waters should be measured from mean low-water spring tide and follow the sinuosities of the coast."

Belgium:[121]

"Any claim by a State to a breadth of territorial waters greater than that agreed upon in an international convention could only be accepted if justified by undisputed international usage based on a special geographical configuration."

Canada:[122]

"In the case of bays where the distance from headland to headland is more than ten miles but the bay itself cannot be entered without traversing territorial waters, the waters of such bays shall be national waters.

"In the case of bays where the distance from headland to headland is more than ten miles and the bay can be entered without traversing territorial waters, the base line is a straight line drawn across the bay at the place where the entrance first narrows to ten miles.

"An exception should be made in the case of bays which, for historic or geographic reasons, are considered as part of the inland waters of the coastal State. Here the base line is drawn from headland to headland."

France:[123]

"Granville Bay is recognized to consist of territorial waters by the Fisheries Convention of 2 August 1839, concluded with Great Britain (Article 1), and by Article 2 of the Fisheries Regulations concluded on 24 May 1843 with Great Britain."

Germany:[124]

"As regards 'historic bays', it would seem right in principle to require the coastal State making such a claim in respect of bays exceeding six nautical miles in width to prove that the bay has acquired the status of 'inland waters' of the coastal State through long usage generally recognized by other States."

Great Britain:[125]

"By general acquiescense, certain historic bays have been recognized as forming part of the national territory, even though their width exceeds that indicated in the earlier part of the

[120] See L.o.N.P. 1929.V.2, p. 117.

[121] *Ibid.*, p. 120.

[122] *Ibid.*, Supplement (*a*), p. 2.

[123] *Ibid.*, p. 160.

[124] *Ibid.*, p. 111.

[125] *Ibid.*, p. 163.

answer on this point. In the case of such bays, the territorial waters are measured from a base line passing across the bay at the place recognized as forming the limits of the national territory."

Japan:[126]

"In the case of a bay or gulf the whole of which is regarded, by time-honoured and generally accepted usage, as belonging to the coastal State in spite of the fact that the distance between the two coasts exceeds ten nautical miles, the territorial waters extend seawards at right angles from a straight line drawn across the bay or gulf at the entrance."

Norway:[127]

"There is no rule in Norway regarding the maximum distance between the starting-points of the base lines from which the breadth of the territorial waters is calculated. In choosing the places which, according to the Decree of 1812, are to be regarded as the extreme points, the particular circumstances of each part of the coast have to be taken into account. There may be historical, economic or geographical factors, such as a traditional conception of territorial limits, the undisturbed possession of the right of fishing, exercised by the coastal population since time immemorial and necessary for its subsistence, and also the natural limits of fishing-grounds.

"In this connexion, it should also be observed that all fjords, bays and coastal inlets have always been claimed as part of the Norwegian maritime territory, whatever the width at their mouth and no matter whether they are formed by the mainland or by developments of the '*Skjaergaard*'. In determining the starting-points for calculating the breadth of territorial waters, the base line chosen is the lowest-water mark."

Netherlands:[128]

"The Netherlands see no reason to object to the recognition of historic rights in respect of certain bays; such rights would, however, have to be precisely defined in the proposed Convention."

Poland:[129]

"... Regard should also be had to established usage. If a State exercises sovereignty over a bay and no objection has been raised by other States, the waters of the bay should be regarded as territorial waters."

Portugal:[130]

"There are, however, bays with a breadth largely exceeding the limits previously suggested which nevertheless are regarded in their entirety as part of the national territory of the States to which their shores belong. These are what are known as *fechadas* bays. This exception is founded on the domestic legislation of the various States, their higher interests and necessities, and long-established usages and customs. Moreover, the special position of these bays has been recognized both in judgements of the courts and in certain treaties. From a variety of circumstances, the State to which the bay belongs finds it necessary to exercise full sovereignty over it without restriction or hindrance. The considerations which justify their claim are the security and defence of the land territory and ports, and the well-being and even the existence of the State.

"In addition, these bays are in some cases recognized spawning- and breeding-grounds of certain species of fish of high commercial and industrial value. These species would tend to disappear if no restrictions were placed on the methods of fishing. Again, such bays may be very productive fishing-grounds, and for that reason it is absolutely essential that the industry there should be regulated and controlled. As was previously stated, this would only be feasible if the sovereignty of the bays was assigned to the State owning its shores.

"It should be specially pointed out that regulation and control of this kind would also be advantageous to other States as, owing to the well-known fact of the dispersion of species, the open sea would be abundantly stocked with fish.

"Moreover, the population on the shores of certain bays enjoy the exclusive right of fishing through immemorial and unbroken usage, and fishing is their best and most remunerative occupation. The retention of this exclusive right is a matter of supreme importance for such populations.

"In the case of any bay possessing some or all of the characteristics mentioned above, no limitation is or can be placed on its breadth reckoned along the lines joining the outermost headlands. These bays belong wholly to the States concerned and form an integral part of their territory, the base line for calculating the belt of territorial waters being the line uniting the outermost points of the bay.

"In this way Portugal regards as part of her European continental territory the bays formed by the estuaries of the rivers Tagus and Sado, comprising the areas included between Cape Razo and Cape Espichel and between Cape Espichel and Cape Sines respectively."

[126] *Ibid.*, p. 168.

[127] *Ibid.*, p. 174.

[128] *Ibid.*, p. 177.

[129] *Ibid.*, p. 182.

[130] *Ibid.*, p. 184.

PART II

The theory of historic bays: an analysis

I. LEGAL STATUS OF THE WATERS OF BAYS REGARDED AS HISTORIC BAYS

94. Are the waters of a bay which is regarded as a historic bay part of the "territorial sea", or are they assimilated to "internal waters"? This question is very important, for different rules govern the two parts of the sea, particularly as regards one point of vital interest in international law: the innocent passage of foreign vessels. As a general rule, States are not bound under international law, to allow such passage in their internal waters.

95. For the purpose of determining the legal status of historic bays, two distinct situations have to be considered: (*a*) historic bays bordering on the shores of a single State; and (*b*) those bordering on the shores of two or more States.

A. *Historic bays the coasts of which belong to a single State*

96. The distinction between the waters within historic bays surrounded by the territory of a single State and the territorial sea seems to be a well established fact. Nevertheless, the distinction has not always been formulated with all the desirable clarity. For example, the

note addressed by the Norwegian Minister of the Interior to the Norwegian Minister of Foreign Affairs concerning the Vestfjord, states that the fjord in question "is considered to form part of the territorial sea of Norway" (*supra*, para. 38). In its reply to questionnaire No. 2 prepared in 1926 by the Committee of Experts for the Progressive Codification of International Law, the Norwegian Government stated that "Norwegian bays and fjords have always been regarded and claimed by Norway as forming part of the territory of the Kingdom". In the same paragraph, however, the Norwegian Government added that "Norwegian law has always held from most ancient times that these bays and fjords are *in their entirety* an integral part of Norwegian territorial waters" (*supra*, para. 35).

97. In its reply to the list of points prepared by the Preparatory Committee of the Codification Conference, 1930, the French Government stated that "Granville Bay is recognized to consist of territorial waters" (*supra*, para. 93). Similarly the Polish Government stated that "if a State exercises sovereignty over a bay and no objection has been raised by other States, the waters of the bay should be regarded as territorial waters" (*supra*, para. 93). The Egyptian Government said that "according to Egyptian public law, the breadth of the territorial waters is..., except as regards the Bay of El Arab, the whole of which is, owing to its geographical configuration, regarded as territorial waters."[131]

98. Some of the authorities also seem — at least, that is the impression one obtains from the language they use — to confuse the waters of historic bays with the territorial sea. For example, De Cussy regards certain maritime areas such as the Sea of Azov, the Zuyder Zee and the Gulf of Bothnia, as part of the territorial sea (*supra*, para. 12). It may well be that the confusion is often due to the looseness of the terminology employed rather than to differences of opinion on the actual principle.

99. Westlake states that many gulfs are "recognized by immemorial usage as territorial sea of the States into which they penetrate". Yet in citing certain examples, he goes on to say: "The Bay of Conception... which is wholly British... Chesapeake and Delaware Bays, which belong to the United States, and the Bay of Cancale... which belongs to France" (*supra*, para. 92).

100. Similarly, Pitt-Cobbett states that Conception Bay "was held to be a part of British Territory"; that Hudson Bay "is also claimed as territorial water by Great Britain"; that the United States "include in their territorial waters" Chesapeake Bay, Delaware Bay and others; that France "claims" the Bay of Cancale; and that Norway claims Varangerfjord "as territorial waters" (*supra*, para. 92).

101. The terms in which these opinions are expressed would hardly justify the conclusion that their authors necessarily assimilate the waters of historic bays to the territorial sea. The distinction between these two classes of maritime area is often obscured by defective terminology. Areas normally regarded as "internal waters" are variously referred to as "territorial waters", "national waters" or "waters forming part of the territory". The International Law Commission has now put an end to this terminological chaos by giving each of the three parts of the sea a distinct designation: "the high seas", "the territorial sea" and "internal waters".

102. The distinction between the waters of historic bays and the territorial sea is always clearly drawn in draft codes. According to the draft codes, whether prepared by learned societies or under the auspices of the League of Nations — all of which use more or less the same formula regarding the delimitation of the territorial sea in bays — the line from which the territorial sea is to be measured in a bay is a straight line drawn across the mouth at the point nearest to the sea where the width of the bay does not exceed a given distance (ten miles, twelve miles, etc.).[132] The fact that the territorial sea does not begin, in a bay, until a fictitious line drawn in the sea at a certain distance from the coast clearly implies that the waters situated to landward of that line are not part of the territorial sea. The same applies, therefore, to the waters of historic bays, the status of which is recognized by these draft codes as an exception (or as a possible exception) to the general rule applicable to ordinary bays. The draft convention amended by Mr. Schücking in consequence of the discussion in the Committee of Experts (*supra*, para. 86) even states expressly, in article 4, that the waters of the bays defined in that article are to be assimilated to internal waters; and the bays defined in that article are those which are bordered by the territory of a single State and in which the territorial sea is measured from a straight line drawn across the bay at the part nearest the opening towards the sea where the distance does not exceed ten miles "unless a greater distance has been established by continuous and immemorial usage".

103. The draft articles prepared by the International Law Commission[133] also draw a clear distinction between the waters of bays and the territorial sea. The Commission's draft assimilates the waters of ordinary bays, which it defines and for which it lays down the

[131] *Ibid.*, p. 125; see also *supra*, para. 24.

[132] The same procedure for delimiting the territorial sea in bays is prescribed in many treaties and national statutes; e.g. Treaty of 2 August 1939 between Great Britain and France, article 9 (de Martens, *Nouveau recueil general de traites*, vol. XVI, p. 254); Convention of 6 May 1882 between Germany, Belgium, Denmark, France, Great Britain and the Netherlands, article 2 (*Ibid.*, 2nd series, vol. XIX, p. 510); Treaty of 27 March 1893 between Portugal and Spain, article 2 (*British and Foreign State Papers*, vol. 85, p. 416); Treaty of 31 December 1932 between Denmark and Sweden, article 2 (*League of Nations Treaty Series*, vol. 139, p. 215).

National statutes: Brazil, Decree No. 5796 of 11 June 1940, article 17 (1) (*Collecçao das leis*, 1940, vol. VI); Italy, Navigation Code of 30 March 1942, article 2 (*Gazzetta Ufficiale* No. 75, 1942).

A number of statutes classify as internal waters all bays bordering on the country's shores; some of these specify limits, others do not. See for example, the Yugoslav Act of 1 December 1948 (*Sluzbeni List*, vol. 4, No. 106, 8 December 1948, item 875, p. 1739).

[133] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159).

applicable rules, to internal waters. Article 7, which is reproduced in its entirety above (para. 2), expressly states that the waters within a bay, the coasts of which belong to a single State and the width of which at the mouth does not exceed fifteen miles, shall be considered internal waters. In a bay with a wider opening, the only waters regarded as internal are those enclosed by a line drawn within the bay at the point where its width does not exceed fifteen miles. The article also provides for the case where different lines of a length of fifteen miles can be drawn. In that case, that line should be chosen which encloses the maximum water area within the bay. Paragraph 4 of the same article then provides that these rules do not apply to historic bays. Accordingly, following the precedent of the draft codes referred to in the preceding paragraph, the International Law Commission's draft recognizes that in the case of the so-called historic bays there may be some departure from the restrictive rules envisaged for ordinary bays.

104. The exception contained in article 7, paragraph 4, covers, in addition, certain other noteworthy cases, namely those where the straight baseline system provided for in article 5 is applied.[134] The full text of article 5 reads as follows:[135]

"1. Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.

"2. The coastal State shall give due publicity to the straight baselines drawn by it.

"3. Where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic."

105. In its draft, therefore, the Commission envisages another category of waters which it likewise describes as internal waters. These are the maritime areas lying to landward of straight baselines the drawing of which is justified by the special geographic features of the coast or, "where necessary", by economic interests "the reality and importance of which are clearly evidenced by a long usage". These provisions were drafted on the basis of the judgement of the International Court of Justice in the Anglo-Norwegian Fisheries Case (18 December 1951). The Court held that certain basic considerations brought to light criteria which could provide courts with an adequate basis for their decision regarding the delimitation of the territorial sea. In the light of these considerations, the Court approved the Norwegian system of delimitation (*supra*, para. 64) prescribed by the Decree of 1935 on the grounds of "well-established national titles of right", "the geographical conditions prevailing on the Norwegian coasts" and the "vital interests of the inhabitants of the northernmost parts of the country". The Court held that the Norwegian waters situated between the baseline and the land were internal waters.[136] [137]

106. Nevertheless, the provisions of the International Law Commission's draft governing this category of internal waters are so worded that, in certain circumstances, these waters may not enjoy exactly the same status as internal waters normally enjoy, for within these internal waters created by the drawing of straight baselines, the coastal State is bound to recognize the right of innocent passage in all cases where those waters "have normally been used for international traffic".

107. In effect, the Commission has propounded a principle which could be termed the principle of the historic right of innocent passage in a specified category of internal waters. It seems, however, that this principle can only be invoked in wholly new situations. The commentary to article 5 states:

"The question arose whether in waters which become internal waters when the straight baseline system is applied the right of passage should not be granted in the same way as in the territorial sea. Stated in such general terms, this argument was not approved by the majority of the Commission. The Commission was, however, prepared to recognize that if a State wished to make a fresh delimitation of its territorial sea according to the straight baseline principle, thus including in its internal waters parts of the high seas or of the territorial sea that had previously been waters through which international traffic passed, other nations could not be deprived of the right of passage in those waters. Paragraph 3 of the article is designed to safeguard that right."

108. Article 5, paragraph 3, which is the paragraph in which this principle is stated, was non-existent in the draft articles on the régime of the territorial sea prepared by the Commission at its seventh session. The Commission inserted this paragraph in its final draft in the light of observations made by Governments. In the comments submitted by the Government of the United Kingdom, it is stated that:[138]

"... Her Majesty's Government regard it as imperative that, in any new code which would render legitimate the use of baselines in proper circumstances, it should be clearly stated that the right of innocent passage should not be prejudiced thereby, even though this may involve that, in certain cases, this right shall become exercisable through internal as well as through territorial waters. Her Majesty's Government consider that the Commission would be performing a most useful function if it were to give mature consideration to the problem how the use of baselines is to be reconciled with existing rights of passage. For their part, Her Majesty's Government can only say at this

[134] For the text of article 7, paragraph 4, see *supra*, para. 2.

[135] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159), pp. 13 and 14.

[136] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951: I.C.J. Reports, 1951, p. 132.*

[137] See also the Court's ruling on the legal status of "historic waters", *supra*, para. 58.

[138] *Official Records of the General Assembly, Tenth Session, Supplement No. 9* (A/2934), pp. 43 and 44.

stage that, in their view, in case of conflict, the right of passage, as a prior right and the right of the international community, must prevail over any alleged claim of individual coastal States to extend the areas subject to their exclusive jurisdiction."

109. In this connexion, it is pertinent to recall the United Kingdom's admission in the Anglo-Norwegian Fisheries Case that Norway was entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fell within the conception of a bay (conclusion No. 5); and that, also on historic grounds, Norway was entitled to claim as Norwegian territorial waters all the waters of the fjords and sunds which had the character of legal straits (conclusion No. 9) (*supra*, para. 57). The United Kingdom contended, however, that part of those waters, including those forming the channel known as the Indreleia, constituted an international route and that, consequently, the right of innocent passage through it could not be denied. In dealing with this last submission, the Court held that the Indreleia was not a strait at all but rather a navigational route prepared as such by means of artificial aids to navigation provided by Norway. In those circumstances, the Court was unable to accept the view that the Indreleia had a status different from that of the other waters included in the *skjaergaard*. The Court did, however, qualify its ruling on the Indreleia by stating that it applied only "for the purposes of the present case" (*supra*, para. 72).

110. It will be noted that, in this case, the United Kingdom, in taking the view that the "historic waters" constituted an international navigational route, proposed that those waters should be assimilated not to internal waters but to the territorial sea. Accordingly, the proposal took into account the legal incompatibility between the concept of internal waters and that of the right of innocent passage of foreign vessels. On the other hand, it constitutes a departure from the rule that historic waters are internal waters.

111. The treatment of the waters of historic bays as internal waters is recognized in the decisions of national courts relating to certain bays, such as the Bay of Chaleur, Chesapeake Bay, Conception Bay and Delaware Bay (*supra*, paras. 14-23).

112. In their replies to the list of points prepared by the Preparatory Committee of the Codification Conference, 1930, several Governments expressed the opinion that the waters of historic bays were internal waters (see, for example, the replies of the Governments of Germany,[139] Canada,[140] Great Britain,[141] Japan [142] and Portugal [143]). The majority of the learned authorities take the same view.

113. Sir Cecil Hurst [144] makes a special point of showing that the waters of bays are internal waters and not part of the territorial sea. In support of his argument, he cites, first, the opinion expressed by Lord Hale, in *De Jure Maris* (p. 1), which has been followed in various judicial decisions and which forms the substance of British doctrine on that subject:

"That arm or branch of the sea which lies within the *fauces terrae* where a man may reasonably discern between shore and shore is, or at least may be, within the body of a county and therefore within the jurisdiction of the sheriff or coroner."

114. The author also cites some judicial decisions, among them those which determine the status of Conception Bay, Chaleur Bay and Chesapeake Bay. He concludes this part of his article by saying:

"The series of precedents and authorities quoted above, all working back ultimately to Lord Hale's principle that 'waters *intra fauces terrae* may be within the body of a county', confirm the proposition that the interior waters of a bay are national waters [145] and not territorial waters, but the question of what is for this purpose a bay, that is to say, what body of water *intra fauces terrae* can be so appropriated as to become a part of the national territory, must still be considered."

115. After considering the rules applicable to the bays which should be considered as forming part of the national territory, Sir Cecil concludes as follows:

"A bay for this purpose means a defined inlet, penetrating into the land, moderate in size and with both shores subject to the same sovereign. An inlet at the mouth of which one can see clearly from shore to shore may be presumed to have been appropriated as part of the national territory and will, therefore, constitute a bay; for working purposes this distance may be taken as ten miles and the line will then pass from headland to headland. In the case of a larger inlet, it lies on the territorial State to establish that it has been appropriated as part of the national territory. Where this is not proved, the line from which the territorial waters are measured will not pass from headland to headland but will cross the inlet at the spot where it first narrows to such an extent as to be obviously a bay; in practice this may be taken as the place where it first narrows to ten miles.

"All the waters lying inwards from this base line are national waters and form part of the national territory. They stand in all respects on precisely the same footing as the national territory. Waters within the three-mile limit to seawards of this base line are territorial waters. In territorial waters foreign States are entitled, to the extent recognized by international law, to the exercise of the right of passage. In national waters there is no such right."

116. Gidel [146] firmly insists that the waters of historic bays, like those of ordinary bays whose width does not exceed the distance adopted for determining whether or not an inlet constitutes a bay (in his opinion, ten miles), are internal waters. He expresses himself as follows:

"... a statement that a bay, for example one within two headlands fifty miles apart from each other, is a 'historic' bay, means that all the waters of that bay enclosed by that fictitious line between the two headlands are internal waters and that only from that line, representing the outer limit of 'internal waters', can the territorial sea be measured. If the bay, were not 'historic', the belt of territorial sea would follow the

139 Ser. L.o.N.P. 1929.V.2, p. 111.

140 *Ibid.*, Supplement (a), p. 2.

141 *Ibid.*, p. 163.

142 *Ibid.*, p. 168.

143 *Ibid.*, p. 184.

144 "The Territoriality of Bays", *British Year Book of International Law*, 1922-23, pp. 42-54.

145 By "national waters" the author means "internal waters". He uses the first of the two expressions in order to draw a clear distinction between the "marginal belt, commonly known as territorial waters, and the bay".

146 *Op. cit.*, pp. 624-627.

sinuosities of the coast and, as long as those sinuosities created [illegible] with a mouth wider than the distance adopted [illegible] whether an inlet constitutes a bay (in our system, ten miles), that bay would contain no internal waters [illegible] the very small area between the low water mark and the bays. When once a bay has been held to be 'historic', all of its waters become internal waters with all the consequences which the status of internal waters entails. One consequence is that the coastal State is no longer bound to admit the 'innocent passage' of foreign vessels in the waters of that bay.

"It cannot be too strongly stressed, therefore, that 'historic' waters are not merely waters over which the coastal State claims certain rights, certain powers taken from the aggregate of the powers which together constitute what is called 'sovereignty'; there is nothing in common between the appropriation by a State of a certain area as 'historic waters' and the extension of some of that State's powers beyond its maritime territory into the part of the high seas known as the contiguous zone. In a sea area which has acquired a 'historic' character, the coastal State may wholly deny to the other members of the international community any access whatsoever to the subsoil, soil, mass and surface of the water, or the superjacent air space. Furthermore, the limits of the maritime territory of that State are advanced by an equivalent distance seawards, the baseline of the territorial sea coinciding with the outer limit of internal waters. Consequently, any claim by a State alleging a 'historic' title to a portion of the sea which is not part of its maritime territory under the generally accepted rules has extremely serious consequences for all the other States, without distinction." [147]

"As a rule, the coastal State will not in fact claim over the waters which it means to transfer to the 'historic' category all of the rights which a coastal State is entitled to exercise in its internal waters; normally, only the exercise of the right of fishing (or, in the case of certain species of marine fauna, the right of hunting) will be claimed as the exclusive prerogative of its nationals or made conditional, without discrimination on grounds of nationality, on the previous issue of a licence. Such a prohibition against foreign fishermen in a specified area of water does not prove that that area is regarded as internal waters, for international law permits the exclusion of foreign fishermen from waters forming part of the territorial sea. Such a denial of the right to fish in areas where that right had until then been exercised implies that those areas are now regarded by the coastal State as at least within its territorial sea; the coastal State must therefore show either that the breadth of its territorial sea has been increased or that the baseline of its territorial sea — the breadth of which remains unchanged — has been carried seawards; such an advance of the baseline implies a corresponding extension of internal waters. In practice, the coastal State will always adopt the latter method, which is much simpler than the former, for the extension of internal waters can be done administratively, by drawing new baselines, without disturbing the legislative provisions on the breadth of the territorial sea. The desired result can be attained by routine measures taken by the executive. The final success of the operation will depend on the nature and vigour of the reactions which it will provoke among foreign States. The ensuing diplomatic discussions will then provide the coastal State with the necessary opportunity to invoke, in more or less direct form, the theory of 'historic waters', as justifying the inclusion in its internal waters of sea areas which the ordinary rules of the public international law of the sea do not authorize it to appropriate."

117. In a later passage, Gidel stresses the incompatibility between the concept of internal waters and the exercise of the right of innocent passage by foreign vessels.

"It is always necessary to remember, in dealing with 'historic waters', the essential point that those waters are internal waters. This fact explains many aspects which would otherwise be difficult to grasp. The theory was originally evolved to apply to 'bays', and is still referred to as the theory of 'historic bays', because it was never envisaged that it might apply except in areas which, by reason of their configuration, are generally not used as major international routes of transit; the idea of internal waters and the right of innocent passage exercisable by foreign vessels are two incompatible concepts. The theory of historic waters as internal waters has consequently never applied except to waters where this right of innocent passage is but of insignificant practical interest. That was the idea in the mind of Judge Draper in the *Alleganpax* case, when he emphasized, with reference to the 'historic' Chesapeake Bay, that that Bay could not be made a roadway from one nation to another (Moore's *International Arbitrations*, vol. IV, p. 4341). And, lastly, this explains why the doctrine of historic bays is, as a general rule, never invoked except in the case of bays enclosed by the territory of a single State. For where there are several coastal States around a given bay, freedom of passage becomes a necessity and, as there can be no question of innocent passage through internal waters, the theory of historic bays, which would assimilate such an area to internal waters, cannot apply. Neither the Committee of Experts nor any of the learned societies which have examined the question of 'historic bays' ever had in mind, in that context, any bay other than one bordering on the territory of a single coastal State ..."

118. L. Cavare [147] maintains that since the juridical regime of historic waters corresponds to that of internal waters there can be no right of innocent passage through these waters. The State (he says) exercises over historic waters the totality of the rights which it possesses in its internal waters. He presupposes, however, that "the existence of historic waters is contingent on one general and social condition: that the waters in question do not constitute international waterways. If they did, the position would be very different and the coastal State would be unable to prevent innocent passage in such waters."

119. Higgins and Colombos [148] express a similar opinion:

"The rights of jurisdiction of the littoral State over its territorial gulfs and bays should be considered to be the same as over its national waters. The State is therefore entitled to reserve fisheries to its own subjects and to prescribe and regulate the admission and sojourn of foreign vessels therein, under the same conditions. Where, however, bays or gulfs constitute an international highway, the right of innocent passage of merchant ships must be conceded by the territorial State."

120. Fauchille states the following: [149]

"... According to a generally accepted opinion, the status of gulfs and bays varies, depending on whether they border on the land of one State or of several States, whether their entrance is or is not less than ten miles wide and whether they have or have not a historic character. Gulfs and bays which are less than ten miles wide and are surrounded by a single State, as well as those which, regardless of their width and the ownership of the surrounding coast, are historic bays, form part of the national territory of the countries on which they border; the others are nothing other than a portion of the open sea. This distinction is important in two respects: (1) From the point of view of the rights of States in gulfs and bays. If they (the gulfs and bays) are part of the territory of the coastal country, that country enjoys therein, in matters of navigation, fishing and jurisdiction, all the rights implicit in sovereignty, the scope of those rights depending on whether sovereignty is given an absolute or a relative character. If they are parts of the open sea, they must, both in time of peace and in time of war, remain open to all ships of all nations without restrictions and, as they are not subject to the jurisdiction of any single State,

147 *Le droit international public positif*, vol. II, Paris, 1951, p. 514.

148 *Ibid.*, p. 120.

149 *Op. cit.*, pp. 386-387.

the coastal State cannot enforce its fishing regulations therein; the principle of the freedom of the seas is then applicable in its entirety. (2) From the point of view of the determination of the territorial sea in the gulfs and bays. If these are really part of the State territory, the most landward line from which the littoral sea can be measured is the outer limit of that territory, which means from an imaginary line drawn between the outermost extremities of the coast at the orifice of the gulf or bay. If they are simply a continuation of the high seas, the territorial sea will, on the other hand, have to be measured outwards from the coasts of the gulfs or bays, over their entire curvature, following the sinuosities of the coast."

121. Oppenheim considers as "territorial" such bays as are enclosed by the land of a single littoral State and have an entrance not more than six miles wide (*supra*, para. 92). He defines the term "territorial" as follows: [150]

"The expression 'territorial bay' must not be allowed to obscure the facts (1) that the waters contained in territorial bays, and in the territorial portions of bays not wholly territorial, are not territorial waters and part of the maritime belt, but national waters; and (2) that the limit of the national waters is the datum line for the measurement of the maritime belt."

122. In describing the juridical consequences of the territoriality of bays, Oppenheim states: [151]

"As regards navigation, fisheries, and jurisdiction in territorial gulfs and bays the majority — rightly, it is believed — contend that the same rules of the Law of Nations are valid as in the case of navigation and fisheries within the territorial maritime belt. The right of fishery may therefore be reserved exclusively for subjects of the littoral State.[1] And navigation, *cabotage* excepted, must be open[2] to merchantmen of all nations, though foreign men-of-war need not be admitted unless the gulfs or bays in question form part of the highways of international traffic. But the matter is not settled, and there are some who maintain that foreign vessels may be excluded altogether from territorial gulfs and bays, or admitted only on payment of dues, rates etc."

"[1] The Hague Convention concerning Police and Fishery in the North Sea, concluded on 6 May 1882, between Great Britain, Belgium, Denmark, France, Germany and Holland, by Article 2 reserves the fishery for subjects of the littoral States of such bays as have an entrance from the sea not wider than ten miles, but reserves likewise a maritime belt of three miles to be measured from the line where the entrance is ten miles wide. Practically, the fishery is therefore reserved for subjects of the littoral State within bays with an entrance much wider than ten miles. See Martens, *N.R.G.*, 2nd ser., 9, p. 864."

"[2] But this is not universally recognised, see, for instance, Twiss I, para. 181; Calvo I, para. 307."

123. It may be pertinent to cite the opinions of some members of the Institute of International Law on the legal status of internal waters created through the drawing of straight baselines. In his report of the "distinction between territorial waters and internal waters" submitted to the Tenth Committee of the Institute at its 1954 session at Aix-en-Provence, Mr. Frede Castberg makes the following statement: [152]

"For the purpose of calculating the outer limit of its territorial sea, and especially when the object is to establish the territorial limit within which the right of coastal fishery is reserved exclusively to its population, a State may be entitled on historical, economic and social grounds, to draw long baselines between islands and rocks. Yet that State may conceivably decide not to regard all the waters within those baselines as internal waters, within the meaning attaching to this expression in international law. It may deem it fair or convenient to permit vessels of other States, in time of peace, too, to exercise the right of passage in a portion of the waters situated within the baselines."

124. In a footnote, Mr. Castberg refers to the following statement by Raestad: [153]

"In any case, it is only natural for the foreign States concerned to object to a declaration that all the waters within the baselines are internal waters in the strictest sense."

125. Later, in his conclusion No. 4, Mr. Castberg states: [154]

"The limits of the internal waters of the coastal State may be drawn differently for different purposes, pursuant to legislative provisions enacted by that State, provided always that such a measure does not prejudice the rights of other States, especially the right of innocent passage through the territorial sea."

126. Sir Gerald Fitzmaurice, while sharing the view expressed by Mr. Castberg in conclusion No. 4, prefers to express the idea in the following manner: [155]

"... I would prefer to say that all waters inside the base line from which territorial waters are measured, are internal waters; but that a further distinction is to be drawn between those internal waters which are genuinely *inland* waters (e.g., rivers, creeks, inland lakes, canals, etc.) and those which are not (e.g., large bays and waters between the mainland and islands off the coast). Generally speaking, there is no right of passage through the former waters, but there is, or should be, through the latter. (If this idea were adopted, the expressions 'internal waters' and 'inland waters', instead of meaning the same thing, as they do at present, would each have a distinct meaning.) Under no circumstances should the extension of internal waters made possible by the new base line method operate so as to impede the right of innocent passage through what would be territorial sea if the older coast-line (or tide-mark) rule were still applied."

127. Mr. J. P. A. François, on the other hand, expresses a completely contrary opinion on this question. He states in this connexion (addressing his remarks to Mr. Castberg, rapporteur): [156]

"... The system which you advocate would lead to the adoption of three different zones of the sea: the territorial sea, internal waters and a third zone, which is neither territorial sea nor internal waters, with a somewhat vague legal régime. I would like to dispute the suggestion that international law recognizes the existence of this third zone. International law, in my opinion, bases itself on the assumption — which is, indeed, the most logical one — that the two lines coincide. Your attempt to show the existence in international law of this third zone has not, in my opinion, succeeded. For it is not sufficient to show, as you have done, that certain States do not exercise all their rights in internal waters over the area of those waters. A State is free at any time and in any part of its territory, not to exercise the plenitude of its rights, and this abstention does not produce any essential change in the juridical status of that part of the territory. An area of the sea within the limit of the territorial sea, drawn in conformity with the rules of international law, remains internal waters, whether or not the coastal State chooses to exercise therein all the rights which it possesses. To create new 'zones' in such cases and to recognize, as you propose, 'that the limit of internal waters may be drawn differently for different purposes' can only lead to confusion. Instead of recognizing different limits of internal waters, we should, in my opinion, maintain the clear and practical rule of international law that the outer limit of internal waters coincides with the inner limit of the territorial sea, without prejudice to the freedom of the coastal State to abstain from exercising all of its sovereign rights over the whole extent of that zone."

128. Gidel also questions the views expressed by Mr. Castberg on this point. He states: [157]

"The partitioning which you suggest in internal waters would, I fear, be most dangerous and would only introduce an element of discord on a point on which we have the good fortune to see agreement both in practice and among the authorities. Such a partitioning would imply that each coastal State could, at its pleasure, invest *its own* internal waters with a special juridical status; in this private régime governing internal waters, it would retain all the powers which it might consider advantageous while disclaiming all those creating some liability. But a régime consistent with legal principles should compose a balanced whole, in which the recipient of advantages also has to bear the disadvantages. This concept is of particular importance in international law, where the members of the international community should, in the eyes of the law, stand in a comparable position in their mutual relations. ..."

129. Further on, Gidel adds: [158]

"The fact that a State chooses not to exercise in a given part of its internal waters all the prerogatives vested in it by ordinary international law, neither produces any substantial modification in the juridical status of that State's internal waters nor changes in any way the delimitation of those waters in relation to territorial waters."

130. Gidel ends his criticism of Mr. Castberg's conclusion No. 4 with these words: [159]

"... It is not within the powers of a coastal State to invest its internal waters with a special juridical status less favourable to it than the concept of 'internal waters', as understood in international law, necessarily implies. But the coastal State remains free to forgo, either by treaty or by legislative action, the exercise of any particular prerogative which ordinary international law accords in its internal waters to the coastal State as such."

B. *Historic bays the coasts of which belong to two or more States*

131. The information on this category of bays is not very plentiful. The draft codes prepared by learned societies and those drawn up under the auspices of the League of Nations [160] consider solely the case of a historic bay bordering on the shores of a single State. The same is true of the draft of the International Law Commission, which does not deal with bays bordering on the coasts of two or more States because the Commission had not "sufficient data at its disposal concerning the number of cases involved or the regulations at present applicable to them".

132. The status of the Gulf of Fonseca, the waters of which abut on the territories of Nicaragua, Honduras and El Salvador, was settled by the judgement delivered on 9 March 1917 by the Central American Court of Justice (*supra*, paras. 44-47). This judgement, although confirming that the waters of the Gulf are of a historic character, does not attribute to them the characteristics of internal waters; rather, it tends to class them as territorial sea. The judgement recognizes that the three riparian States are "co-owners" of the waters of the Gulf, except as to the littoral marine league, which is the "exclusive property" of each. This means that the waters of the Gulf are divided into two parts: the first, which begins at the shoreline and continues for a distance of one marine league, is the territorial sea of each of the coastal States; the second, containing all the remaining ("non-littoral") waters of the Gulf, is an area of territorial sea belonging to the three States in common. The Court held that "as to a portion of the non-littoral waters there was an overlapping or confusion of jurisdiction in matters pertaining to inspection for police and fiscal purposes and purposes of national security, and that as to another portion thereof, it is possible that no such overlapping and confusion takes place". The Court decided, therefore, "that as between El Salvador and Nicaragua co-ownership exists with respect to both portions, since they are both within the Gulf; with the express proviso, however, that the rights pertaining to Honduras as *copurcener* in those portions are not affected by that decision".

133. The judgement of the Central American Court of Justice on the status of the Gulf of Fonseca contains two essential points: (1) as historic waters, the waters of the Gulf belong to the coastal States; (2) those waters have the characteristics of the territorial sea and not of internal waters. With reference to the last point, Gidel remarks: [161]

"The judgement of The Central American Court of Justice ... attributes to the waters of the gulf the characteristics not of internal waters, which their status as a historic bay would normally have required, but of the territorial sea. This is a truly remarkable departure from the logical rules governing historic bays."

134. Another relevant case is that of the Bay of Fundy, a ruling on the status of which was requested from Umpire Bates, appointed under the Anglo-American Claims Convention of 1853, in consequence of the seizure of the United States vessel "Washington" at a point ten miles from the shore. The umpire, in deciding that the Bay of Fundy was not a British bay, stated: [162]

"The Bay of Fundy is from 65 to 75 miles wide and 130 to 140 miles long. It has several bays on its coast. Thus the word bay, as applied to this great body of water, has the same

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[150] *Op. cit.*, p. 505, footnote 1.

[151] *Op. cit.*, pp. 509-510.

[152] *Annuaire*, vol. I (1954), pp. 126 and 127.

[153] "*Le problème des eaux territoriales à la Conférence pour la codification du Droit international*", *Revue de Droit international*, 1931, VII, p. 134.

[154] *Annuaire*, vol. I (1954), p. 172.

[155] *Ibid.*, p. 206.

[156] *Ibid.*, p. 208.

[157] *Ibid.*, pp. 219 and 220.

[158] *Ibid.*, p. 221.

[159] *Ibid.*, p. 223.

[160] All the Governments which replied to the Bases of Discussion prepared by the Preparatory Committee of the Codification Conference, 1930, expressed the view that, in the case of bays bordering on the territory of two or more States, the breadth of the territorial sea should be measured from the low-water mark along the coast (Basis of Discussion No. 9 and Observations of the Committee: Ser. L.o.N.P. 1929.V.2, p. 45).

[161] *Op. cit.*, p. 627.

[162] Moore, *International Arbitrations*, vol. 4 (1898), p. [illegible].

meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume the sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographies, are situate in the Atlantic Ocean. The conclusion is, therefore, in my mind irresistible that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the treaties of 1783 and 1818."

135. Dana,[163] in an opinion expressed in November 1877 to the Halifax Fishery Commissioners established pursuant to the Washington Treaty of 1871 between Great Britain and the United States, commented on this decision in these terms:

"This decision was put partly upon its width, but the real ground was that one of the assumed headlands belonged to the United States, and it was necessary to pass the headland in order to get to one of the ports of the United States."

136. Similarly, Fauchille[164] states:

"The arbitral award of 23 September 1854 regarding the Bay of Fundy ruled that that Bay was an open sea, not only because its opening is sixty-five to seventy-five miles wide but also, and indeed principally, because its coasts do not all belong to a single State; one of its headlands is situated in the territory of the United States, the other in the territory of Great Britain."

II. The constituent elements of the theory of historic bays and the conditions for the acquisition of historic title

137. The original purpose of the theory of historic bays was to exclude from the application of the general régime of bays which was then being elaborated certain bays whose status had already been settled by history. In other words, its object was to ensure that, despite the tendency to restrict the area within any large bay which could validly be deemed internal waters, the status of those bays which had already been accepted as wholly internal, on essentially historical grounds, would remain unchanged. Hence, under the theory as originally conceived, a State would be unable to lay claim to a particular bay except by relying mainly on historical evidence, by arguing from the fundamental principle: this bay belongs to me because it has always belonged to me, or because it has belonged to me for a certain time. Today, however, the theory is no longer conceived in such limited terms. In order to place certain bays outside the scope of the normally applicable rules, States no longer rely on factors of a purely historical character; they also — and sometimes even exclusively — rely on factors of a very different nature. The purpose of this inquiry is to discover the factors relied on for the purpose of determining which bays are to constitute exceptions to the rules generally accepted — or, at least, to be elaborated — with respect to ordinary bays.

138. Municipal and international case-law, draft codes and the works of the learned authorities reveal two fundamentally different conceptions of this particular point of the problem. These conceptions are most clearly apparent in doctrine and in the works of codification, as judicial decisions have always ruled on the territoriality of certain bays or certain sea areas strictly in the light of the special circumstances of each case.

A. *First conception: "usage" the sole root of historic title*

139. According to this conception, the right to a bay which does not come under the general rule applicable to ordinary bays can only be founded on "usage". The supporters of this view do not, however, agree on the conditions which such usage should fulfil. One school of thought holds that national usage *per se* is a good root of historic title. Another school considers, on the contrary, that national usage cannot be a good root of historic title unless the usage was recognized, in one form or another, by the other States.

1. *National usage* per se *a good root of historic title*

140. Basis of Discussion No. 8 drafted by the Preparatory Committee of the First Conference for the Codification of International Law, 1930, in confirming the theory of historic bays, speaks only of "usage" (*supra*, para. 87).[165] Other drafts also base the theory exclusively on usage but take into account two additional notions: "time" and "continuity".

141. The draft adopted in 1926 by the Japanese International Law Society only takes into account the notion of time. It limits itself to the expression "immemorial usage" (*supra*, para. 82). By contrast, certain other drafts contain both the notions simultaneously. This is the case with the draft adopted by the Institute of International Law (Paris session 1894) in which the word "usage" is qualified by "continued and of long standing". The same expression recurs in the draft prepared by the International Law Association at its Brussels session (1895) and a similar one in the draft convention amended by Mr. Schucking in consequence of the discussions in the Committee of Experts. The same idea is taken up in Project No. 10 prepared in 1925 under the auspices of the American Institute of International Law (*supra*, paras. 74, 78, 80 and 85).

142. The definition of historic bays given in the project submitted in 1933 to the Seventh International Conference of American States by the American Institute of International Law refers solely to the attitude of the coastal State. It provides that bays or estuaries called historic are those over which the coastal State or States have traditionally exercised and maintained their sovereign ownership (*supra*, para. 81).

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[163] Cited by Phillimore, *International Law*, vol. I (1879), pp. 287-289.

[164] *Op. cit.*, p. 384.

[165] "Basis of Discussion No. 8, drafted by the Preparatory Committee, merely stated that a historic title was acquired by 'usage'. This expression was doubtless intended to imply a peaceful and continued exercise of sovereignty. It could not have been meant as a *purely national* usage, considered independently of the reactions which it provokes in the international community." (*I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951*, vol. III, Rejoinder of Norway, p. 454).

143. In its Counter-Memorial submitted to the International Court of Justice in the Fisheries case, Norway stated:[166]

"What essential point must a State establish in order to substantiate its claim to a bay on historic grounds? The first prerequisite of the coastal State's title is its assertion of sovereignty. It is not in itself sufficient, but it is indispensable. The other factors are but 'special circumstances', which support and justify the claim."

2. *National usage not a good root of historic title unless recognized by the other States*

144. The draft convention adopted by the International Law Association in 1926 speaks of "established usage generally recognized by the nations" (*supra*, para. 79). The draft adopted at its 1928 session at Stockholm by the Institute of International Law uses the expression "international usage". The Institute also considered the possibility of further qualifying this expression with the word "uncontested" (*incontesté*). That word, however, was finally not included (*supra*, paras. 75 and 76). In its reply in the Fisheries Case, the United Kingdom stated:[167]

"It is true that the word *incontesté* was dropped, but the word 'international' was retained to express the principle that *unilateral national pretention is not sufficient*. The national usage must have received *international recognition*."

145. During the debate in the Second Committee of the Codification Conference (1930) concerning the Preparatory Committee's Basis Discussion No. 8 (*supra*, para. 87), certain speakers emphasized the inadequacy of the concept of "usage" as the basis of the theory of historic bays. In the opinion of the Japanese delegation, "a mere claim on the part of the State concerned — which seems to be the sole condition according to the present text, to judge from the words 'by usage' — is not enough". For that reason, the Japanese delegation proposed that the words "long established and universally recognized" should be inserted before the word "usage".[168]

146. A. Raestad makes the following observation:[169]

"In my opinion the most important point is not when and how the occupation or usurpation of any given right in the coastal sea took place. What matters is when and how other nations gave their express or tacit consent, which transformed that occupation or usurpation into a legal title."

147. Fauchille gives the following definition of "historic or vital bays":[170]

"They are the large gulfs and large bays the territoriality of which has been recognized by long-accepted usage and by undisputed custom."

Later, the same author adds:[171]

"Similarly, it is the acquiescence of States which — so it has been held in judicial decisions — accounts for the territoriality of historic bays."

In support of this statement, Fauchille cites the judicial decisions regarding the Bays of Conception, Chesapeake and Delaware (*supra*, paras. 16-23). Then, after giving further examples of historic bays, he again states:[172]

"In cases where the coastal State has claimed sovereignty over such bays, it is the acquiescence of certain States and the absence of protest on the part of other States that have made those bays historic and have given them their territorial character."

148. Jessup also contends that:[173]

"... the legality of the claim is to be measured, not by the size of the area affected, but by the definiteness and duration of the assertion and the acquiescence of foreign Powers."

149. Gidel takes the following view:[174]

"... The mere fact that the coastal State advances the claim that specified waters should be regarded as its property does not in itself oblige other States to accept that claim; in the absence of any organ formally established to examine such claims and expressly authorized by each of the States concerned to render decisions, such claims can only be borne out by evidence of international acquiescence; as a general rule, prolonged usage will afford the necessary proof."

150. Higgins and Colombos express the similar view that:[175]

"... the territorial State is entitled to claim a wider belt of marginal waters, provided that it can show affirmatively that such a claim has been accepted expressly or tacitly by the great majority of other nations."

B. *Second conception: the vital interests of the coastal State as the possible and sole basis of the right to a bay*

151. According to Dr. Drago (*supra*, para. 92), a bay can only be considered historic if there is proof of both of the following: (1) the assertion of sovereignty, which is the basic requirement; and (2) some "particular circumstances" such as those cited by way of example, namely, geographical configuration, immemorial usage or (in Drago's view "above all") the requirements of self-defence.

152. In article 7 of the draft international convention submitted to the Buenos Aires Conference of the International Law Association in 1922 by Captain Storny the following definition of the theory of historic waters is given:

"A State may include within the limits of its territorial sea the estuaries, gulfs, bays or parts of the adjacent sea in which it has established its jurisdiction by continuous and immemorial usage or which, when these precedents do not exist, are unavoidably necessary according to the conception of article 2; that is to say, for the requirements of self-defence or neutrality or for ensuring the various navigation and coastal maritime police services."[176]

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[166] *Ibid.*, vol. I, p. 555.

[167] *Ibid.*, vol. II, pp. 623 and 624.

[168] League of Nations publication V. Legal, 1930, V. 18 (document C.351 (*b*). M.145 (*b*). 1930. V), p. 103.

[169] *La mer territoriale*, 1913, p. 167.

[170] *Op. cit.*, p. 380.

[171] *Ibid.*

[172] *Ibid.*, pp. 381 and 382.

[173] *Op. cit.*, p. 382.

[174] *Op. cit.*, p. 651.

[175] *Op. cit.*, p. 112.

[176] International Law Association, *Report of the Thirty-first Conference*, Buenos Aires, 1922, vol. 2, pp. 98 and 99.

153. According to Captain Storny, that article is:

"... of the greatest importance: it affirms in a more decisive form the last part of article 3 of the *Project de définition et régime de la mer territoriale* of the Institute of International Law. Clearly, too, it contains in synthesis the doctrine of historic bays, according to the manner in which the old principle was formulated by Drago. The final stipulation of the article is perfectly explicable as regards the new nations — the the American nations, for example — many of which possess long and still very thinly populated coasts, and in respect of which the condition of long-established dominion cannot be adduced, as in the case of nations which have already existed for a thousand years or more."

154. When the Second Committee of the 1930 Conference considered Basis of Discussion No. 8 (*supra*, para. 87), the representative of Portugal proposed that the Basis of Discussion should be amended by the addition of the following words:[177]

"or if it is recognized as being absolutely necessary for the State in question to guarantee its defence and neutrality and to ensure the navigation and maritime police services."

155. In support of this amendment, the representative of Portugal pointed out that the idea of usage envisaged in Basis of Discussion No. 8 was no longer unanimously accepted and that some authors adduced not only usage but also other factors which should be taken into account in determining the character of historic bays. After referring to the opinions expressed on this subject by Dr. Drago and Captain Storny, the Portuguese representative stated:[178]

"Generally speaking, usage must be respected, but sometimes usage may be unjustified. Moreover, if certain States have essential needs, I consider that those needs are as worthy of respect as usage itself, or even more so. Needs are imposed by modern social conditions, and if we respect age-long and immemorial usage which is the outcome of needs experienced by States in long past times, why should we not respect the needs which modern life, with all its improvements and its demands, imposes upon States?"

156. Thus, according to this conception, the right to a bay might derive either from usage or from the vital interest of the coastal State. The State would then be entitled to claim such a right by invoking circumstances into which the historical factor does not even enter. Gidel says:[179]

"In this way, the description 'vital bays' is gaining currency. This expression, which is placed on a footing of equality with the expression 'historic bays', sums up in one word the conditions of substance to be fulfilled by the areas in question, whereas the expression 'historic bays' suggested conditions of form only."

157. Expressing his opinion on the value of the notion of "vital bays", Gidel states:[180]

"... claims based purely and simply on the needs or interests of the coastal State, capable of being cited as precedents by other States having coastlines with a different geographic or hydrographic configuration, would be arbitrary."

158. Another significant comment is made by Bourquin:[181]

"... If the territoriality of a bay is to be determined in the light of all the circumstances which characterize each of them, then clearly the vital interests of the coastal State must be taken into account. The formula proposed by Captain Storni and later by the Portuguese Government tends perhaps to oversimplify the issue. Instead of embracing all the factors determining the bay's character, it concentrates on only one, to which it attaches, without any reservation or proviso, a decisive influence. But whatever criticisms may properly be levelled at the formula on that score, there seems little doubt that it expresses something which is not only common sense but also good law, consistent with the practice of States, namely, that the vital interests of the State in the possession of a bay consitute, side by side with historical tradition, one of the bases on which it may rely in claiming sovereignty therein.

"But why should this factor be considered strictly within the context of 'historic titles'? However widely the concept of a 'historic title' is construed, surely it cannot be claimed in circumstances where the historic element is wholly absent. The 'historic title' is one thing; the 'vital interest' is another. Each has its place among the factors to be considered in determining the régime applicable to bays, but they must not be confused."

C. *Various elements considered in judicial decisions dealing with the territoriality of certain bays or maritime areas*

1. *International cases*

Permanent Court of Arbitration (1910)

159. In an award cited earlier in this paper (*supra*, para. 49), the special arbitral tribunal which decided the North Atlantic Coast Fisheries Case between Great Britain and the United States (1910) recognized that "conventions and established usage might be considered as the basis for claiming as territorial those bays... called historic bays." But this statement was only made *obiter* and the tribunal did not go into the details of the theory which it upheld in principle.

160. It is pertinent, nevertheless, to quote from the tribunal's opinion the remarks relating to the notion of "bays" in general. The dispute concerned the interpretation of the Treaty concluded between Great Britain and the United States in 1818 and the meaning of the term "bay" was one of the contested points. The tribunal held that, for the purpose of determining the question of territoriality, the interpretation must take into account all the individual circumstances which were to be appreciated in the case of the bay in question:[182]

"... the relation of its width to the length of penetration inland; the possibility and the necessity of its being defended by the State in whose territory it is indented; the special value which it has for the industry of the inhabitants of its shores; the distance by which it is secluded from the highways of nations on the open sea; and other circumstances not possible to enumerate in general."

[177] Ser. L.o.N.P. 1930.V.16, p. 107.

[178] *Ibid.*, p. 106.

[179] *Op. cit.*, p. 629.

[180] *Ibid.*, p. 635.

[181] *Op. cit.*, p. 51.

[182] *Scott, op. cit.*, p. 187.

Central American Court of Justice (1917)

161. The judgement delivered by the Central American Court of Justice in 1917 regarding the Gulf of Fonseca (for an extract from this decision see *supra*, paras. 44-47) stated that that Gulf belonged to the category of historic bays because is combined all the characteristics that doctrine and the practice of States has prescribed as essential, namely: Secular or immemorial possession accompanied by *animo domini* both peaceful and continuous and by acquiescence on the part of other nations; the special geographical configuration that safeguards so many interests of vital importance to the economic, commercial, agricultural and industrial life of the riparian States; and the indispensable necessity that those States should possess the Gulf as fully as required by those primordial interests and the interest of national defence.

The International Court of Justice (1951)

162. The judgement delivered by the International Court of Justice on 18 December 1951 in the Fisheries Case between the United Kingdom and Norway contains some useful statements on this subject. In that case, the issue before the Court was not the territoriality of certain bays or maritime areas but the international validity of the Norwegian system of delimitation, which was disputed by the United Kingdom. The Court, however, in holding that the system was indeed consistent with the rules of international law, found support for its findings in the historic titles which Norway had claimed,[183] together with other circumstances, in order to justify its system.[184] Some passages from the judgement have already been cited (*supra*, paras. 58-67). They show the grounds on which the Court based its finding that the Norwegian system of delimitation was valid and the circumstances which it held justified Norway's contention that that system was binding on foreign States.

[183] Judge Hackworth declared that he concurred in the operative part of the judgement but desired to emphasize that he did so for the reason that he considered that the Norwegian Government had proved the existence of an historic title to the disputed areas of water (*Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951: I.C.J. Reports, 1951*, p. 144).

[184] Sir Gerald Fitzmaurice makes the following comment: "The point of vital interest regarding historic rights in the Fisheries Case was that the Court recognized yet another basis of historic title — a right to certain waters, deriving not from a historic claim to a given area of sea, as such, but from a historic system of delimiting territorial waters in general which, even if it were otherwise contrary to international law, the State concerned could be said to have acquired a right to employ by long-continued usage and action in that sense, acquiesced in, or anyhow not objected to, by other States." (The Law and Procedure of the International Court of Justice, 1951-54: Point of Substantive Law, *The British Year Book of International Law*, 1954, p. 382.)

In another article, Sir Gerald states: "It should ... be noticed that since the Court had already found that the general rules of international law, as laid down by the Court, did in themselves justify the Norwegian delimitation, it was strictly unnecessary for it to go into the issue of historic rights. Nevertheless, the Court did so and found in favour of Norway on that question also. There was, however, an important difference between the doctrine of historic rights as put forward by Norway and as found by the Court." (The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law, *Ibid.*, 1953, p. 27.)

2. *National cases*

163. Decisions of municipal judicial bodies recognizing the territoriality of certain bays have invariably been based on the special circumstances of each particular case. The section of this paper which discusses the practice of States reproduces the relevant passages from the municipal judicial decisions concerning certain bays, e.g. Chesapeake Bay, Conception Bay and Delaware Bay (*supra*, paras. 16-23).[185]

D. *The proof of historic title*

1. *The onus of proof*

164. Basis of Discussion No. 8 drafted by the Preparatory Committee of Codification Conference, 1930, states that the onus of proving usage is upon the State which seeks to rely on it (*supra*, para. 87). In replying to the list of points prepared by that Committee (*supra*, para. 93), the German Government expressed the opinion that "as regards 'historic bays', it would seem right in principle to require the coastal State making such a claim in respect of bays exceeding six nautical miles in width to prove that the bay has acquired the status of 'inland waters' of the coastal State through long usage generally recognized by other States".

165. Gidel comments on this point as follows:[186]

"The onus of proof rests on the State which claims that certain maritime areas close to its coast possess the character of inland waters which they would not normally possess. The coastal State is the petitioner in this sort of action. Its claims constitute an encroachment on the high seas; and it would be inconsistent with the principle of the freedom of the high seas, which remains the essential basis of the whole public international law of the sea, to shift the onus of proof onto the States prejudiced by that reduction of the high seas which is the consequence of the appropriation of certain waters by the claimant State."

166. In the Fisheries Case, the United Kingdom and Norway were in agreement that the onus of proof was upon the State claiming a historic title. They expressed different opinions, however, on the conditions which have to be made in order to discharge that onus and especially on the nature of the evidence to be produced.[187]

2. *The elements of proof*

167. Since the basic element underlying the theory of historic bays — at least as that theory was originally conceived — is "usage", one must inquire how such usage can be proved. Article 11 of the project sub-

[185] These decisions were interpreted differently by the parties in the Fisheries Case (see, in particular, the Counter-Memorial of Norway, *I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case, Judgement of 18 December 1951*, vol. I, paras. 541, 543 and 544; the Reply of the United Kingdom, *ibid.*, vol. II, paras. 438, 440 and 441).

[186] *Op. cit.*, p. 632.

[187] *I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case, Judgement of 18 December 1951*, vol. I, Counter-Memorial of Norway, p. 556; *ibid.*, vol. II, Reply of the United Kingdom, p. 645.

mitted in 1933 to the International Conference of American States by the American Institute of International Law (*supra*, para. 81) regards as "historic" the bays over which the coastal States have traditionally exercised and maintained their sovereign ownership, either by provisions of internal legislation and jurisdiction, or by deeds or writs of the authorities. According to that definition, before a State can claim a historic title to a bay it must have exercised its sovereignty over that bay. The mere claim of sovereignty does not, therefore, suffice; to satisfy the terms of the definition, sovereignty has to be exercised effectively. On the other hand, the exercise of sovereignty can, according to the definition, be proved by reference to measures under municipal law.[168]

168. In the Fisheries Case, Norway made the following statement:[169]

"It cannot be seriously questioned that, in the application of the theory of historic waters, the acts of municipal authority by the coastal State occupy an essential place.

"The existence of a historic title necessarily implies the accomplishment of such acts. The basis of the title is the exercise of sovereignty, which, provided that it is peaceful and continuous, gains international recognition and takes its place in the international legal order."

169. After an analysis of the title of ownership resulting from occupation and of the title which derives from historic continuity, Norway contended that:

"In both cases, therefore, — in occupation and in prescription — the exercise of territorial sovereignty is essential.

"How can such sovereignty be asserted? First and foremost by acts of municipal authority (laws, regulations, administrative measures, judicial decisions, etc.)."

170. In its Rejoinder, when explaining its position regarding the importance of "international recognition" in the acquisition of a historic title, Norway added:[170]

"It is certain that a State can only invoke a historic title if it is in a position to prove the existence of a *peaceful* and *continued* usage. A State which asserted its sovereignty over certain sea areas but failed to exercise that sovereignty effectively, or, because of the opposition of other States, did not succeed in exercising a sufficient degree of sovereignty, cannot rely on such usage. Hence, the attitude of other States is an element which should be taken into consideration.

"But the Norwegian Government does not share the opinion of the United Kingdom Government either concerning the weight to be attached to that element or on the circumstances in which it becomes relevant.

...

"The United Kingdom Government regards usage as *merely evidence of the acquiescence of other States*. In that Government's view, the decisive factor, *indeed the only one capable of legitimating the claim of the coastal State, is the acquiescence of other States*.

"The Norwegian Government believes that the essence of a historic title can never be reduced to such a simple formula.

"In the explanation offered by the opposing Party, it is argued that the historic title is merged in the title based on recognition (unilateral or by treaty). Yet the legal effects of peaceful and continued usage derive from a principle very different from that applicable to recognition.

"In reasoning as it does, the United Kingdom Government seems to overlook the fact that in the creation of historic title one of the essential factors is *time*.

"In recognition, *time* plays no part whatsoever. Juridically, recognition may be instantaneous. Nor does it lose any of its force thereby, *because in recognition the decisive and only factor is acquiescence*.

"A historic title can never be acquired unless it is supported by *long usage*. *In such a title, the essential factor is duration*. Admittedly, a usage which has acquired validity with the passage of time must also have been *peaceful and continuous*. If it had not been, it would never have acquired validity. But — as the word itself shows clearly enough — a 'historic' title derives its force from history, that is to say from *the passage of time*.

"The United Kingdom Government, it is true, recognizes that this time element is necessary; but it only considers this element in the light of what it [that Government] considers the sole test: the acquiescence of other States. In its view, 'the passage of time — that is the long duration of usage — is a vital element in the title *as supplying evidence of the implied acquiescence of other States in the claim*' (para. 311 (10)). (Our italics.)

"The acquisition of juridical force through the passage of time is, however, based on something very different. It is explained by *the need for stability*.

"A situation which has subsisted peacefully over a long period comes to be regarded as permanent; it becomes part of the general legal order, unless there are compelling reasons for excluding it therefrom. In Fauchille's words 'Since the interests of the international community demand peaceful relations, the rights of States must, after a certain time, be made secure against any attack.' (*Traité de Droit international public*, vol. I, part II, p. 757.)

"This principle, which stands on its own merits, independently of the acquiescence of States, certainly plays an important part in the notion of historic titles."

171. By contrast, the reply of the United Kingdom states:[171]

"... Municipal decrees and other acts of municipal authority have no higher significance in an international tribunal than as relevant *facts* which show an exercise of State authority *but which may or may not be sufficient to establish an international right to exercise the State authority*. Whether or not municipal decrees and other acts of State authority in fact provide evidence of a title valid in international law necessarily depends not only upon the nature of the municipal act *but upon the rules of international law*. In an international tribunal the question in each case must always be: 'what interpretation is placed upon the municipal acts by international law?'"

172. Further on, the Reply continues:

"... The United Kingdom Government in effect maintains that the assertion of State authority, though essential to the establishment of a claim to maritime territory, is not sufficient and that, the rights of other States being affected, their acquiescence is required..."

173. Later, under the title "An historic title to an area of sea is acquired by prescription, not by occupation" the Reply states:

"Where the claim of title is to land which is a *res nullius* an' in which, therefore, other States possess no legal interest, the mere peaceful exercise of State authority in regard to the land suffices to establish the occupation. The *res nullius* is in law susceptible of occupation by the first comer and the exercise of State authority in regard to the land will be an exercise of exclusive State authority creating an appropriation binding on other States. In these cases, the sole question is whether the claimant State can establish, to use the words of the Permanent Court in the *Eastern Greenland case* (A/B 53, p. 46), '*l'intention et la volonté d'agir en qualité de souverain, et quelque manifestation ou exercise effectif de cette autorité*.' The long period of the exercise of State authority in these cases merely serves as confirmatory evidence of an occupation, which is equally valid without the long period, provided that the occupation already exists at the 'critical date', namely, the date when another State seeks to assert a rival authority (see the *Eastern Greenland case* (A/B 53, p. 45). No doubt the position will be much the same in a case where the dispute concerns a boundary the facts of which are confused or in a case where, as in the *Island of Palmas Arbitration*, the earlier status of the territory is obscure. In these classes of case the acquiescence of other States in the exercise of State authority upon which the claim of title is founded is irrelevant. The acts of State authority do not touch the rights of other States and the title is valid *ab initio*. The acts of State authority are thus *both essential and sufficient* to establish the title.

"Where, on the other hand, the claim is to waters of the sea which are not *res nullius*, the position is quite different. It matters not whether the legal status of the high seas be considered to be a *res communis*, as is the opinion of Sir Cecil Hurst, or whether it be considered to be a *res sui generis*, as is the opinion of Gidel. The legal incidents of the régime of the high seas are well understood. No one disputes that each and every State has both a right to claim for its nationals rights of navigation and fishing in the high seas and a competence to exercise exclusive jurisdiction over all vessels of its flag on the high seas. Hence, a claim to exclusive sovereignty over areas of sea beyond the generally recognized limits of maritime territory directly touches and derogates from the existing rights of other States. Such a claim is not like a claim to a *res nullius* (occupation) because it interferes with established rights. It is a case of prescription and is open to the challenge that in origin it is 'illegal and invalid', as the Permanent Court said of the attempted Norwegian occupation of Eastern Greenland (A/B 53, p. 64), because at the critical date Eastern Greenland was not *res nullius*. Where prescription is involved, it is not sufficient to prove the exercise of State authority by acts under municipal law. It is necessary to show both a long and continuous exercise of State authority and also acquiescence in that exercise by other States."

174. In his dissenting opinion in the Fisheries Case, Sir Arnold McNair states:[172]

"... to constitute an historic bay it is not sufficient merely to claim a bay as such, though such claims are not uncommon. Evidence is required of a long and consistent assertion of dominion over the bay and of the right to exclude foreign vessels except on permission. The matter was considered by the British Privy Council in the case of Conception Bay in Newfoundland in *Direct United States Cable Company v. Anglo-American Telegraph Company* (1877) 2 Appeal Cases 394. The evidence relied upon in that case as justifying the claim of an historic bay is worth noting. There was a Convention of 1818 between the United States of America and Great Britain which excluded American fishermen from Conception Bay, followed by a British Act of Parliament of 1819, imposing penalties upon 'any person' who refused to depart from the bay when required by the British Governor. The Privy Council said:

'It is true that the Convention would only bind the two nations who were parties to it, and consequently that, though a strong assertion of ownership on the part of Great Britain, acquiesced in by so powerful a State as the United States, the Convention, though weighty, is not decisive. But the Act already referred to... goes further'... 'No stronger assertion of exclusive dominion over these bays could well be framed.' [This Act] 'is an unequivocal assertion of the British legislature of exclusive dominion over this bay as part of the British territory. And as this assertion of dominion has not been questioned by any nation from 1819 down to 1872, when a fresh Convention was made, this would be very strong in the tribunals of any nation to show that this bay is by prescription part of the exclusive territory of Great Britain...'"

175. Later, Sir Arnold states:

"Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdiction, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them."

176. Referring to the nature of the evidence which is required, Gidel[173] expresses the following opinion:

"It is hard to specify categorically what kinds of acts of appropriation constitute sufficient evidence; the exclusion from these areas of foreign vessels and their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. It would, however, be too strict to insist that only such acts constitute adequate evidence..."

177. Similarly, Bourquin[174] states that:

"... The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign.

"There are, however, some borderline cases. Thus, the placing of lights or beacons may sometimes appear to be an act of sovereignty, while in other circumstances it may have no such significance."

178. Gidel and Bourquin were referring to the award of the special arbitral tribunal convened in 1909 at The Hague to deal with the question of the delimitation of a certain part of the maritime boundary between Norway and Sweden. One of the circumstances which

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[168] Bustamante, the author of the project in question, states: "... when attempt is made to determine what is to be understood by the word 'historic', some Governments maintain that to the traditional possession of the bay, there must be added the consent of other States.

"It is very dangerous, because this last condition lends itself to notable abuses. No one specifies from how many and from which States this conformity must proceed, or what is the legal value of one or various divergent opinions. In respect to a certain bay, the continuous possession of which is claimed by a coastal State by right of sovereignty, no controversies or difficulties have ever arisen, either on account of its distance from the great maritime and commercial currents of the Globe, because the opportunity of expounding and solving doubtful questions has not presented itself. It is inadmissible that such circumstances should suffice to deprive the bay of its historic character" (*op. cit.*, pp. 99 and 100).

[169] *I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case (United Kingdom v. Norway), Judgment of 18 December 1951*, vol. I, Counter-Memorial of Norway, para. 364, pp. 567 and 568.

[170] *Ibid.*, vol. III, paras. 574-576, pp. 452 and 453.

[171] *Ibid.*, vol. II, Reply of the United Kingdom paras. 475-477, pp. 647-649.

[172] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951; I.C.J. Reports, 1951*, p. 164.

[173] *Op. cit.*, p. 633.

[174] *Op. cit.*, p. 43.

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the tribunal held to constitute evidence supporting the Swedish claim was:

"... The circumstance that Sweden has performed various acts in the [disputed waters], especially of late, owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty."[196]

179. In the Fisheries Case, the International Court of Justice found that:

"The Norwegian Government has relied upon an historic title clearly referable to the waters of Lopphavet [*supra*, para. 71], namely, the exclusive privilege to fish and hunt whales granted at the end of the 17th century to Lt.-Commander Erich Lorch under a number of licences which show, *inter alia*, that the water situated in the vicinity of the sunken rock of Gjesbaun or Gjesbaene and the fishing grounds pertaining thereto were regarded as falling exclusively within Norwegian sovereignty ..."

180. In his separate opinion, Judge Hsu Mo pointed out that:

"With regard to the licences for fishing granted on three occasions by the King of Denmark and Norway to Erich Lorch, Lieutenant-Commander in the Dano-Norwegian Navy towards the close of the 17th century, I do not think that this is sufficient to confer historic title on Norway to Lopphavet. In the first place, the granting by the Danish-Norwegian Sovereign to one of his subjects of what was at the time believed to be a special privilege can hardly be considered as conclusive evidence of the acquisition of historic title to Lopphavet *vis-à-vis* all foreign States. In the second place, the concessions were limited to waters near certain rocks and did not cover the whole area of Lopphavet. Lastly, there is no evidence to show that the concessions were exploited to the exclusion of participation by all foreigners for a period sufficiently long to enable the Norwegian Government to derive prescriptive rights to Lopphavet."[198]

3. *Evidence of international recognition*

181. It has been shown that, according to some schools of thought, international recognition is a decisive factor in the acquisition of historic title. Now the question is what form the recognition should take. Must it be universal? Must it be express, or can it be inferred from absence of opposition? And, in a case where a State has expressly recognized the territoriality of a bay, to what extent is that recognition valid *vis-à-vis* States which have abstained from lodging objections?

182. On this point Raestad says:[197]

"Since prescription, as it is known in municipal law, does not exist in international law, except where provision is made for it in treaties, a situation which has existed for a long period is only recognized by the law of nations if the prolonged existence of that state of affairs proves the tacit consent of States; the consent of the States most directly concerned, by reason of proximity or other circumstance, binds also the States less directly concerned and those which acquired an interest in that state of affairs subsequently ..."

183. Fauchille[199] makes the following comment:

"As every State has the right to renounce any right vested in it, we believe that States which have expressly consented to respect the territoriality of a bay which previously, because of its size, constituted an open sea, and consequently an area in which they were entitled to navigate freely, would be estopped from objecting to the coastal State's exercise of exclusive sovereignty in that bay. But should the territorial status of that bay also be regarded as binding on States which simply abstained from objecting? Can such abstention be equivalent to consent? This seems rather more doubtful. Many jurists have indeed disputed the soundness of the theory of historic bays. Perels, for example, states (in his *Droit maritime*, p. 35) that 'the unilateral exercise of alleged rights, even if it does not evoke any objections from other States (either because they are acting in collusion or because they are impotent to resist), can never be placed against those which have not acquiesced, either expressly or by conduct showing an unmistakable intention'..."

184. Gidel[199] expresses the following opinion:

"It is a particularly delicate matter to determine, in general terms, the conditions which the established 'usage' must fulfil; it seems impossible to insist that the recognition of that usage should either be 'universal' in the strict sense of the word, or express. A single objection formulated by a single State will not invalidate the usage; furthermore, all objections cannot be placed on an equal footing, regardless of their nature, the geographical or other situation of the objecting State ..."

185. The judgement of the International Court of Justice in the Fisheries Case contains some significant statements on this subject (*supra*, para. 66).[200] The Court held that the absence of "opposition on the part of other States" was a circumstance supporting the validity of the Norwegian system of the delimitation, of which it established "the existence and the constituent elements". The Court said in this connexion:

"The Court, having thus established the existence and the constituent elements of the Norwegian system of delimitation, further finds that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States."

186. Some paragraphs later, the judgement says:

"Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States.

"The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact ..."

187. And in a subsequent passage, the Court adds:

"The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.

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[196] Scott, *op. cit.*, p. 130.

[197] *Fisheries case (United Kingdom v. Norway), Judgement of 18 December 1951, I.C.J. Reports 1951*, p. 157.

[198] *Op. cit.*, p. 174.

[199] *Op. cit.*, p. 382.

[200] *Op. cit.*, p. 634.

[200] As regards the attitude of the Parties on this subject, see, particularly, the Reply of the United Kingdom (vol. II, pp. 652-659) and the Rejoinder of Norway (vol. III, pp. 457-461).

"The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."

188. Sir Gerald Fitzmaurice, commenting on the Court's judgement[201] under the title "The criterion of 'absence of opposition'", makes the following statement:

"It will be seen that in these passages[202] the Court (in contradistinction to the more positive criteria of the minority Judges) set up the test of absence of opposition by other States. How far is this test conclusive? Clearly, absence of opposition is relevant only in so far as it implies consent, acquiescence or toleration on the part of the States concerned; but absence of opposition *per se* will not necessarily or always imply this. It depends on whether the circumstances are such that opposition is called for because the absence of it will cause consent or acquiescence to be presumed. The circumstances are not invariably of this character, particularly for instance where the practice or usage concerned has not been brought to the knowledge of other States, or at all events lacks the notoriety from which such knowledge might be presumed: or again, if the practice or usage concerned takes a form such that it is not reasonably possible for other States to infer what its true character is. These proved to be the crucial points of the historic aspects of the Norwegian case."[203]

189. Later, in a section entitled "Protests, Admissions", Sir Gerald makes the following statement:[204]

"... in certain circumstances failure to protest may amount to an admission, and an admission may be implied from silence or inaction."

The author develops this statement by citing passages from the Court's judgements in the Fisheries Case, in the Minquiers and Ecrehous Case (1953) and in the case concerning the rights of United States of America nationals in Morocco (1952).[205]

E. *The time factor in the acquisition of an historic title*

190. Is there some specified period of time which must elapse before an historic title is acquired? Expressions such as "of long standing", "immemorial", "confirmed by time" or "well-established", which occur both in judicial decisions and in the works of authors, all suggest a fairly long period but do not give a clear indication of its exact duration.

191. Scelle,[206] who admits prescription as a mode of acquiring rights in international law, states that the period of prescription "is indeterminate [in international law] and must in each case be submitted to the test of reasonableness".

192. Judge Alvarez,[207] in his separate opinion in the Anglo-Norwegian Fisheries Case, states that:

"International law does not lay down any specific duration of time necessary for prescription to have effect. A comparatively recent usage relating to the territorial sea may be of greater effect than an ancient usage insufficiently proved."

193. Sir Gerald Fitzmaurice[208] expresses the following view on this subject:

"... the passage of an appreciable period of time is necessary for the acquisition or formation of historic rights, because if the essential role of the historic element is to supply an inference of acquiescence on the part of other States, arising from their inactivity coupled with the passage of time — then time must be allowed to pass."

194. After citing the extract from the separate opinion of Judge Alvarez quoted above, Sir Gerald Fitzmaurice comments on it as follows:[209]

"If the emphasis is placed on the words 'comparatively' and 'insufficiently proved', this pronouncement is fully acceptable, but it is even so more applicable to the case of the formation

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[201] "The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law", *British Year Book of International Law*, 1953, pp. 1-70.

[202] The passages in question are extracts from the Court's judgement which the author cites in the preceding paragraph of his article in order to show the Court's attitude on the element of "recognition" or consent. That paragraph reads as follows:

"*The consent of other States necessary.* While finding in favour of Norway that other States — and in particular the United Kingdom — must be held to have acquiesced in the Norwegian system of delimitation, the Court did not adopt the Norwegian theory of the absolute and conclusive character, as against all the world, of a long-continued national usage *per se*. It considered the acquiescence, the consent in some form, or at least the toleration, of other States, to be necessary. This is apparent from such passages as the following (*I.C.J. Reports*, 1951, pp. 136-7):

'The Court, having thus established the existence and the constituent elements of the Norwegian system of delimitation, further finds that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States.'

and again (p. 138):

'From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States.'

Similarly (*ibid.*):

'The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact.'

and (at p. 139):

'The notoriety of the facts, the general toleration of the international community, ... would in any case warrant Norway's enforcement of her system ....

'The Court is thus led to conclude that the method ... established in the Norwegian system ... had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law.'

The Judges delivering separate or dissenting opinions took a like view on this point. Thus, Judge Hsu Mo (*ibid.*, p. 154) referred to Norway's 'consistent past practice which is acquiesced in by the international community as a whole'. Judge Read (p. 194) said:

'If it can be shown that the Norwegian system has been recognised by the international community, it follows that it has become the doctrine of international law applicable to Norway, either as special or as regional law.'

Later (at p. 195), he spoke of a Norwegian system

'... applicable or applied to the coasts in question; known to the world; and acquiesced in by the international community.'

[203] *Ibid.*, p. 33.

[204] *Ibid.*, p. 42.

[205] *Ibid.*, pp. 42-47.

[206] *Op. cit.*, p. 435.

[207] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951; I.C.J. Reports, 1951*, p. 152.

[208] *Op. cit.*, pp. 30-31.

[209] *Op. cit.*, p. 31.

by usage of a new general rule of customary international law than to the acquisition of specific and special rights by an individual State on a prescriptive basis. Professor Lauterpacht has recognized this distinction in the following passage: [1]

'However, assuming ... that the emergence of the doctrine of sovereignty over the adjacent areas consituted a radical change in pre-existing international law, the length of time within which the customary rule of international law comes to fruition is irrelevant.[2] For customary international law is not yet another expression for prescription.[3] A "consistent or uniform usage practised by the States in question" — to use the language of the International Court of Justice in the *Asylum Case [I.C.J. Reports*, 1950, p. 276] — can be packed within a short space of years. The "evidence of a general practice as law" — in the words of Article 38 of the Statute — need not be spread over decades. Any tendency to exact a prolonged period for the crystallization of custom must be proportionate to the degree and the intensity of the change that it purports, or is asserted, to effect.'

"A new rule of customary law based on the practice of States can in fact emerge very quickly, and even almost suddenly, if new circumstances have arisen that imperatively call for legal regulation — though the time factor is never wholly irrelevant: but the acquisition of prescriptive rights by individual States, contrary to the exisfing (and otherwise still subsisting) international order, involves different considerations and criteria, that make the passage of time, and an appreciable period of time at that, essential at any rate in all those cases (which are the type of the true prescriptive or historic claim) where the positive consent or express recognition of States cannot be shown."

"1 'Sovereignty over the Submarine Areas', *British Year Book of International Law*, 27 (1950), p. 393."

"2 Or perhaps not so much irrelevant as not determinent *per se*."

"3 This is obviously correct, but the two have important features in common. Both depend on the establishment of a practice or usage — one general and the other particular — and each derives its eventual legal sanction from some form of consent on the part of States — either general acceptance in the one case, and in the other specific recognition or tacit acquiescence. Apart from any difference in the time factor, the *method* (practice and assent) is the same both for the establishment of new customary law and for the acquisition of prescriptive or historic rights."

195. Bourquin [210] notes that, by contrast with municipal law (where the prescriptive period for usucapion is laid down by precise rules), international law does not, for the purpose of the acquisition of historic title, contain any rule laying down a specific period. He adds:

"... As far as the so-called historic bays are concerned, the question is of no practical interest. The usage on which the State relies in such a case goes back to the most distant past. It is an immemorial usage, in the strict sense of that word.

"We should not forget that the general trend of the development of the law of the sea in modern times is characterized by a gradual shrinkage of the maritime territory of States.[1] In principle, it is not the sovereignty of the State which has spread at the expense of the high seas but the high seas which have spread by absorbing areas previously subject to the authority of the State. Consequently, the waters in respect of which an historic title is claimed are not waters which the coastal State has appropriated at a more or less recent date, but waters which have always formed part of its territory and which have never been a portion of the high seas ..." [211]

"1 We are now witnessing — for reasons too elaborate to set forth here — a reverse trend, a reaction against any excessive reduction of the prerogatives of the coastal State. But from the time of the *Mare liberum* Grotius until the Codification Conference of 1930 the dominating influence had been the desire to extend the area of the high seas."

[210] *Op. cit.*, p. 49.

196. The author cites Baldoni,[212] who says:

"... At the time when the rule of the freedom of the seas was asserting itself, the Bays of Cancale, Chaleurs, Chesapeake, Conception, Delaware, Fonseca and Miramichi were already under the effective permanent sovereignty of the coastal States. The principle of the freedom of the seas had accordingly never applied to them. It is unnecessary, therefore, in order to explain the coastal State's title thereto, to rely on any rules of prescription or, as others believe, on some supposed special rules created as exceptions to the principle of the freedom of the high seas. The status of these bays can be explained — by analogy with our treatment of the other parts of the territorial sea — by the general rule governing occupation, the application of which, even in the present case, is not excluded by any rule of an exceptional nature. Consequently, the status of historic bays is not, as the authorities generally contend, exceptional. Their status is normal, because it derives from a fundamental principle of the law of nations. We may add, though strictly in passing, that some of these bays, such as Chesapeake and Delaware, are of such configuration and size that they can so surely be regarded as accessory to the coasts surrounding them that no further inquiry of any kind is necessary to establish that they are not subject to the principle of the high seas."

F. *The notion of continuity in the formation of a historic title*

197. As has been shown above (para. 141), some draft codes qualify the "usage" which gives rise to a historic title by the adjective "continuous". In other words, according to these drafts a historic title cannot be acquired without proof of "continuous usage".

198. In the Fisheries Case, the International Court of Justice, after having established the existence and the constituent elements of the Norwegian system of delimitation, held "that this system was 'consistently' applied by Norwegian authorities". In that connexion, it considered the documents on which the United Kingdom based its contention that the Norwegian Government had not consistently followed the principles of delimitation which, it claimed, formed its system. The Court concluded as follows: [213]

"The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in Norwegian practice. They may be easily understood in the light of the variety of the facts and conditions prevailing in the long period which has elapsed since 1812, and are not such as to modify the conclusions reached by the Court.

"In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose."

[211] Norway expressed a similar opinion in the Fisheries Case (see Rejoinder, para. 561).

[212] "Les navires de guerre dans les eaux territoriales étrangères", Academy of International Law, *Recueil des Cours*, 1938, vol. III, pp. 221-222.

[213] See *supra*, para. 65.

III. Scope of the theory of historic bays

199. The application of the theory is not limited to bays. It tends to be applied also to straits, to the waters within archipelagos and, generally, to the various areas capable of being comprised in the maritime domain of the State.

200. Article 2 of the draft covention adopted in 1936 by the International Law Association refers to all such maritime areas in general terms, as follows: [214]

"... each maritime State shall exercise territorial jurisdiction within the limits hereinafter provided and not further, save to the extent that jurisdiction is conferred by ... or established usage generally recognized by Nations."

201. At the eighth plenary meeting of the 1930 Conference on the Codification of International Law, Mr. Giannini, the Italian representative, said that the Second Committee: [215]

"... recognized that there were historic situations — 'historic' bays, although the use of the adjective was criticized. This conception was also extended from bays to certain historic waters. It will be the first time that this adjective used in this sense will appear in official documents."

202. At the eleventh meeting of the Second Committee of that Conference, Mr. Miller, the representative of the United States of America, criticized the expression "historic bays". In his view: [216]

"Both words are inaccurate — both 'historic' and 'bays'. It is a question, so far as the latter word is concerned, of waters, not merely waters that either from habit or technical definition are called bays, but waters by whatever name they may have generally or technically have been called. Furthermore, the word 'historic' is an inaccurate word, because it is not only a question of history, it is also a question of the national jurisdiction of the coastal State. That, I submit, is the question involved in regard to these waters, and the continual use of the expression 'historic bays', with mention of one or two bays here and there in different parts of the world, has led to a great deal of confusion of thought as to the principles which are involved."

203. The United States delegation consequently submitted an amendment to Basis of Discussion No. 8, in the following terms: [217]

"Waters, whether called bays, sounds, straits, or by some other name, which have been under the jurisdiction of the coastal State as part of its interior waters, are deemed to continue a part thereof."

204. It should be noted that in the Fisheries Case the International Court of Justice recognized as consistent with international law the Norwegian argument that all the waters [218] within the limits drawn by the Decree of 1935 were historically Norwegian waters.

205. A statement of special significance in this context is that made by the Court regarding the Lopphavet basin, which it refused to characterize as a bay (*supra*, paras. 70-71):

"Even if it were considered that in the sector under review the deviation was too pronounced, it must be pointed out that the Norwegian Government has relied upon a historic title clearly referable to the waters of Lopphavet ..."

206. And later:

"The Court considers that, although it is not always clear to what specific areas they apply, the historical data produced ... lend some weight to the idea of the survival of traditional rights reserved to the inhabitants of the Kingdom ... Such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within the bounds of what is moderate and reasonable."

Part III

Various suggestions made at the First Codification Conference of The Hague (1930) for the solution of the problem of historic bays

207. The Preparatory Committee of the First Codification Conference of The Hague (1930) suggested that "it would be convenient that at the Conference the Governments should state what are the bays which they claim to be historic bays and what are the roadsteads for which they claim to have the territorial-waters belt measured from the exterior boundary of the roadstead". [219]

208. At the eleventh meeting of the Second Committee of that Conference, held on 28 March 1930, Mr. Giannini, the Italian representative, submitted a proposal in the following terms: [220]

"The Conference expresses a *voeu* that the Communications and Transit Committee should appoint a special Committee to study what are the so-called historic bays, and what is their present *de facto* and *de jure* situation, with a view to collecting the data necessary to codify their legal status at a subsequent Conference for the Codification of International Law."

209. In 1930, Antonio Sanchez de Bustamante y Sirven prepared a study of the territorial sea [221] which was transmitted, through the American Institute of International Law, to the First Codification Conference

[214] *Report of the Thirty-fourth Conference*, 1926, p. 43. See also article 12 of the draft contained in *Harvard Research* (*supra*, para. 83), articles 11 and 16 of the draft submitted in 1933 to the Tenth International Conference of American States (*supra*, para. 81) and the Report of the Second Committee of the Codification Conference, 1930 (*supra*, para. 90).

[215] Ser. L.o.N.P. 1930.V.14, p. 53.

[216] Ser. L.o.N.P. 1930.V.16, p. 107.

[217] *Ibid.*

[218] All the Norwegian coastal waters within the straight baselines following the general direction of the coast. The Court stressed that the Norwegian coast meant the outer contour of the "*skjaergaard*", i.e. "all the islands, islets, rocks and reefs ...". Furthermore, "within the '*skjaergaard*', almost every island has its large and its small bays; countless arms of the sea, straits, channels and mere waterways serve as a means of communication for the local population ...". (*Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951, I.C.J. Reports, 1951*, p. 127).

[219] Ser. L.o.N.P. 1929.V.2, p. 64.

[220] Ser. L.o.N.P. 1930.V.16, pp. 112-113.

[221] *The Territorial Sea*, 1930 (already cited).

of The Hague. In this study, the eleventh chapter of which contains a "Project of Convention" on the juridical regime of the territorial sea, the author states:[222]

"It appears necessary that the Convention should define these historic bays, in order that it be their fundamental element, the exercise or uninterrupted sanction of their character, that determines the recognition of this quality. The permanent right of the coastal State may be proved, both by the provisions of its internal legislation, if it has such, and by acts of jurisdiction and of government as well as by declarations previous to the signing of the proposed Convention by the competent authorities.

"Some means must, however, exist so as to avoid future abuses, as well as discussions and conflicts. With this aim, the Project of Convention establishes that every country having historic bays, within the definition that it contains, shall specifically state this on depositing its ratification. And as claims from third parties may arise, the opportunity to try them and the jurisdiction to decide them must not be passed over in silence. These claims we shall in due time discuss and formulate in view of the maximum extent of territorial waters."[223]

Article 11 of the "Project of Convention" gives a definition of historic bays (*supra*, para. 81). The other relevant articles are 18 to 25, which are worded as follows:[224]

"Art. 18. Territorial sea has an exterior maritime zone three miles wide, of sixty to the degree of longitude on the Equator, and starting from the interior limits indicated in this Convention.

"Art. 19. The contracting States which maintain, for all purposes or for some, a greater extent which has been fixed previous to the signing of the present Convention, shall declare this extent when depositing their respective ratification or when adhering to same.

"Art. 20. Such declaration shall be communicated at once by the Secretariat of the League of Nations to all other contracting or adhering States, which may oppose it within a period of six months from the notification, if not in accord with the conditions established in the foregoing article.

"Art. 21. Each State ratifying the present Convention or adhering thereto after the said declaration has been made, shall also be notified in the same manner, and may oppose it within the six months that follow its notification or adhesion, or take part in the current legal procedure, save in the event of an already existing judicial or arbitrary decision.

"Art. 22. The opposition shall be communicated to the Secretariat of the League of Nations, which shall notify thereof the remaining contracting parties or adherents.

"Art. 23. The opposing State stall be obliged, within another six months following reception of advice of opposition by the Secretariat of the League of Nations, and if it has not solved the difficulty through direct diplomatic negotiations between those interested, to submit it to the decision of third parties, in the manner established in the Conventions which it has in force with the opposed State, and, in the absence of this, to the Permanent Court of International Justice, if both of them were signatories of the Statute. In the event that neither of these cases should be applicable to them, the difference shall be submitted to arbitration.

"Art. 24. The procedure adopted according to the foregoing article, shall be immediately notified by the opposing State, and authentic copies of documents recording the results shall be furnished to the Secretariat of the League of Nations, and the latter shall also immediately transmit these copies and notify the other contracting States or adhering to the Convention, that may take part in the same procedure, although without intervening in the appointment of the arbitrary Court or in the organization and constitution of any other means of conciliation or decision that may have been accepted.

"Art. 25. The rules established in the foregoing articles 19 to 24 shall be applicable also to the bays, estuaries and straits comprised in articles 11 and 16 of the present Convention."

[222] *Ibid.*, p. 100.

[223] *Ibid.*, pp. 109-111.

[224] *Ibid.*, pp. 143-144.

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JURIDICAL REGIME OF HISTORIC WATERS, INCLUDING HISTORIC BAYS

DOCUMENT A/CN.4/143

Study prepared by the Secretariat

[*Original text: English*]
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I. Origin and background of the study

1. The present study was prepared by the Codification Division of the Office of Legal Affairs at the request of the International Law Commission. The Commission's decision to initiate the study was taken at its twelfth session (1960), in pursuance of General Assembly resolution 1453 (XIV) of 7 December 1959. The Assembly resolution was prompted by a resolution on the matter taken by the United Nations Conference on the Law of the Sea held in 1958 at Geneva. A brief review of these resolutions and of their background will help to clarify the purpose of the study.

2. At its eighth session (1956) the International Law Commission completed the final draft of its articles concerning the Law of the Sea[1] and this draft was subsequently referred by the General Assembly to the above-mentioned United Nations Conference on the Law of the Sea. Article 7 of the draft dealt with bays; paragraphs 1 to 3 contained a definition of a bay and laid down rules for the delimitation of internal waters in a bay (the coasts of which belong to a single State), while paragraph 4 read in part as follows:

"4. The foregoing provisions shall not apply to so-called historic bays ..."[2]

[1] See chapter II of the Report of the International Law Commission covering the work of its eighth session, 23 April-4 July 1956, *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159).

[2] *Ibid.*, pages 5 and 15.

3. Although much attention was given in the reports of the Special Rapporteur and in the discussions of the Commission to the substantive provisions on bays in article 7 in its successive stages of development, there is little in the records of the Commission to shed light on the concept of "historic bays" referred to in paragraph 4 of the article.

4. A clause regarding "historic bays" did not appear in the first two reports on the territorial sea prepared by the Special Rapporteur. He submitted, however, at the fifth session of the Commission, an addendum[3] to his second report in which he presented redrafts of certain articles contained in the second report, among them the article on bays. These new drafts were to a large extent inspired by solutions proposed by a group of experts to a number of technical problems which had been referred to them by the Special Rapporteur. As redrafted, the article on bays, in its first paragraph, gave a definition of "a bay in the juridical sense" and thereafter stated:

> "Historic bays are excepted; they shall be indicated as such on the maps."

In his third report,[4] submitted at the sixth session of the Commission, the Special Rapporteur transferred this clause regarding "historic bays" from the text of the article to the commentary. At the following session, he submitted a new redraft of the article on bays,[5] and in the text of that redraft the clause regarding "historic bays" reappeared. However, now the clause excepted "historic bays" not from the general definition of a bay but from the rules regarding the drawing of closing lines in bays. Another difference from the previous formulation of the clause was that the provision that "historic bays" should be marked on the maps, had been omitted.

5. In this form, i.e., as a proviso excepting "historic bays" from the rules regarding drawing closing lines in bays, the clause was included in article 7 (on bays) of the preliminary draft on the régime of the territorial sea which was adopted by the Commission at its seventh session and circulated to the Member States for observations.

6. In its reply[6] the Union of South Africa pointed out that the commentary accompanying the article seemed to indicate that the real intention of the Commission was to exempt "historic bays" not only from the rules on the drawing of closing lines but also from the other rules on bays laid down in the article. The Special Rapporteur and the Commission agreed, and the clause regarding "historic bays" was, consequently, in the final draft of the article formulated as set out above in paragraph 2 of this paper.

7. In the course of the discussions in the Commission of the article on bays in its successive formulations, only passing references were made to "historic bays". The debates, as a consequence, did not substantially contribute to the clarification of the concept.[7]

8. In order to provide the United Nations Conference on the Law of the Sea with material relating to "historic bays", a memorandum[8] on the subject was prepared by the Codification Division and circulated as a preparatory document of the Conference. It was pointed out in the memorandum that historic rights were claimed not only in respect of bays but also in respect of other maritime areas. However, as the purpose of the memorandum was to shed light on the concept of "historic bays" referred to in the draft of the International Law Commission, the emphasis was on this latter concept, and historic claims to other waters were dealt with only incidentally. The content of the memorandum was succinctly set out in its paragraph 5 as follows:

> "5. Part I describes the practice of States by reference to a few examples of bays which are considered to be historic or are claimed as such by the States concerned. Part I then proceeds to cite the various draft codifications which established the theory of "historic bays", and the opinions of learned authors and of Governments on this theory. Part II discusses the theory itself, inquiring into the legal status of the waters of bays regarded as historic bays, and setting forth the factors which have been relied on for the purpose of claiming bays as historic. The final section is intended to show that the theory does not apply to bays only but is more general in scope."[9]

9. The United Nations Conference on the Law of the Sea which met in Geneva on 24 February 1958 referred those articles of the International Law Commission draft dealing with the territorial sea and the contiguous zone, including article 7 on bays, to its First Committee. At the third meeting of the Committee, in connexion with the organization of the Committee's work, the representative of Panama proposed that the Committee should set up a sub-committee to examine the question of bays and in particular the problem of the legal status of "historic bays". The representative referred to the above-mentioned Secretariat memorandum and stated that it was

> "essential that the international instruments to be drafted by the Conference should deal with such questions as the definition of historic bays, the rights of the coastal State or States, the procedure for declaring a bay 'historic', the conditions for recognition by other States, and the peaceful settlement of disputes arising from objections by other States".

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[3] A/CN.4/61/Add.1, the French text of which is printed in *Yearbook of the International Law Commission, 1953*, volume II, page 76.

[4] A/CN.4/77, printed in French, in *Yearbook of the International Law Commission, 1954*, volume II, page 1.

[5] In A/CN.4/93, the French text of which is printed in *Yearbook of the International Law Commission, 1955*, volume II, page 5.

[6] A/CN.4/99, *Yearbook of the International Law Commission, 1956*, volume II, page 77.

[7] The question of bays was discussed at the fourth session in 1952, the seventh session in 1955, and the eighth session, in 1956; see, respectively, *Yearbook of the International Law Commission, 1952*, volume I, pages 188-190; *Yearbook, 1955*, volume I, pages 205-216, 251, 278, 279-80; and *Yearbook, 1956*, volume I, pages 190-193. In the 1955 discussion, Sir Gerald Fitzmaurice affirmed that the concept of "historic bays" formed part of international law (*Yearbook, 1955*, volume I, page 209), while Mr. García-Amador and Mr. Hsu (*ibid.*, pages 210 and 211) said that they had doubts about "historic bays". Mr. García Amador contended that this concept only benefited old countries having a long history and that there were many comparative newcomers to the international community—countries in Latin America, the Middle East and the Far East—which could not claim such historic rights. The reference to "historic bays" in the relevant article was, however, adopted without any member voting against it (*ibid.*, page 214).

[8] Historic Bays, Memorandum by the Secretariat of the United Nations (A/CONF.13/1), printed in *Official Records of the United Nations Conference on the Law of the Sea*, 1958, United Nations publication, Sales No.: 58.V.4, vol. I: Preparatory Documents, pages 1 *et seq.*

[9] *Ibid.*, page 2.

The work of the First Committee with respect to these problems would, in the opinion of the representative, be considerably facilitated if it appointed a sub-committee specifically concerned with the law relating to bays.[10]

10. After a short discussion of the matter in the First Committee, the Chairman suggested that, as the forthcoming general debate in the Committee would probably make clear what other sub-committees would be needed, and it was desirable to consider the composition of all the sub-committees at the same time, the Panamanian proposal should be held over for the time being, on the understanding that he would bring it before the Committee at an early convenient date. The representative of Panama agreed to that procedure.

11. In the discussion at the third meeting and the general debate in the First Committee, the Panamanian proposal won support from several delegations, in particular the delegations of Saudi Arabia, Yemen,[11] El Salvador,[12] and Pakistan,[13] while the representative of the United Kingdom[14] expressed doubts regarding the usefulness of a study of the matter by a sub-committee. The representative of the Federal Republic of Germany[15] said that he thought that it would be difficult to establish general rules applicable to "historic bays". Mr. J. P. A. François, the International Law Commission's special rapporteur on the law of the sea, who was present at the Conference as an expert to the Secretariat, also advised against setting up a sub-committee to deal with "historic bays". In his view, the Conference did not have at its disposal the material needed for a thorough study of the question, and the Conference might therefore

> "merely use the term 'historic bays' and leave it to be construed, in case of dispute, by the Court, with due regard for all the features of the special case, which could not possibly be provided for in a general rule".

If necessary, he added, the International Law Commission

> "could be instructed to study acquisition by prescription, with special reference to 'historic bays'".[16]

12. When the Panamanian proposal was taken up for decision at the twenty-fifth meeting of the First Committee,[17] the representative of India stated that although his delegation was highly interested in the question of "historic bays", he felt that the Committee had neither the time nor the material available to deal with the matter properly. Each bay, he said, having its own particular characteristics, a mass of data would have to be sifted and collated before any general principles could be established. Instead of setting up a sub-committee, the Conference should therefore adopt a resolution recommending that the General Assembly make arrangements for further study of the question of "historic bays" by whatever body it might consider appropriate. The representative of Panama indicated willingness to accept this idea put forth by India and consequently to withdraw his own proposal. At the suggestion of the Chairman, the Committee thereafter agreed to postpone its decision until the text of a joint proposal by the delegations of India and Panama along these lines had been submitted.

13. In the meantime, the delegation of Japan submitted a proposal containing a definition of "historic bays". The delegation proposed that paragraph 4 of article 7, on bays, should be replaced by the following text:

> "4. The foregoing provisions shall not apply to historic bays. The term 'historic bays' means those bays over which coastal State or States have effectively exercised sovereign rights continuously for a period of long standing, with explicit or implicit recognition of such practice by foreign States."[18]

The representative of Japan explained that his delegation has submitted this proposal because the definition of "historic bays" was part of the task of codification and could not be left to arbitral tribunals or courts dealing with particular disputes regarding such bays.[19] The definition included in the proposal had been prepared with the aid of the Secretariat's memorandum on "historic bays" (A/CONF.13/1).

14. The representative of Thailand agreed with the Japanese delegation that the definition of the term "historic bays" should not be left to any court or tribunal, but on the other hand he considered that the definition included in the Japanese amendment was not precise enough. The representative of the Soviet Union urged that the Japanese amendment should not be considered until the Committee was ready to take up the Indian-Panamanian proposal referred to above.[20]

15. At its forty-eighth meeting the First Committee had before it both the Japanese amendment to article 7 and a draft resolution submitted jointly by India and Panama and reading as follows:[21]

> *"The First Committee,*
>
> *"Considering* that the International Law Commission has not provided for the régime of historic waters including historic bays,
>
> *"Recognizing* the importance of the juridical status of such areas,
>
> *"Decides* to request the Secretary-General of the United Nations to arrange for the study of the régime of historic waters including historic bays and the preparation of draft rules which may be submitted to a special conference."

16. As far as the records of the meeting[22] show, no explanation was given why the subject of the proposed study in the joint draft resolution was described as "historic waters including historic bays", not merely "historic bays" which was the term used in paragraph 4 of article 7 and also in the original Panamanian proposal to set up a sub-committee. When introducing the draft resolution, one of the sponsors used the term "historic waters" while the other used the term "historic

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[10] *Official Records of the United Nations Conference on the Law of the Sea, Volume III, First Committee*, page 2.

[11] *Ibid.*

[12] Op. cit., page 48.

[13] Op. cit., page 51.

[14] Op. cit., page 9.

[15] Op. cit., page 45.

[16] Op. cit., page 69.

[17] Op. cit., page 74.

[18] A/CONF.13/C.1/L.104, op. cit., page 241.

[19] Op. cit., pages 145, 198.

[20] Op. cit., pages 146, 198.

[21] A/CONF.13/C.1/L.158, op. cit., page 252.

[22] Op. cit., pages 147-148. It may be of interest in this respect to note that during the deliberations in the First Committee the question of an historic title to maritime areas came up not only in regard to bays but also in connexion with the problem of the delimitation of the territorial seas of two States whose coasts are opposite or adjacent to each other (article 12 of the Convention on the Territorial Sea and the Contiguous Zone); see op. cit., pages 187-193.

bays", and in the debate some speakers used the former, others the latter, term.

17. The attention of the Committee was in fact focused on other aspects of the draft resolution. It was in particular pointed out that the resolution should rightly be in the name of the Conference not of the First Committee, and also that it was more seemly for the Conference to address itself to the General Assembly than to the Secretary-General. Both these points were admitted by the sponsor. Another change which was of more substantive importance was also accepted by the sponsors. Their attention was drawn to the possibility that the study might result in the conclusion that in view of the diversity of the particular cases of "historic waters, including historic bays" no general rules could be drawn up. The representative of India replied that no general rules could, of course, be drafted if it was clearly impossible to do so, and that it was precisely the object of the proposed study to determine whether such rules could be drafted.

18. In view of the various points brought up during the discussion, a decision on the draft resolution and on the Japanese amendment was further postponed.

19. The matter came before the First Committee again at its sixty-third meeting.[23] India and Panama now submitted a revised version of their draft resolution, reading as follows:[24]

"The First Committee,

"Considering that the International Law Commission has not provided for the régime of historic waters including historic bays,

"Recognizing the importance of the juridical status of such areas,

"Recommends that the Conference should refer the matter to the General Assembly of the United Nations with the request that the General Assembly should make appropriate arrangements for the study of the juridical régime of historic waters including historic bays, and for the result of these studies to be sent to all Member States of the United Nations."

In this wording, the draft resolution was adopted by the First Committee. The delegation of Japan withdrew its amendment to article 7.

20. It might be useful to point out that in the revised draft resolution which was adopted, the word "juridical" had been inserted before the word "régime" so as to clarify the character of the study to be undertaken. The points made in discussion referred to above had also been taken into consideration in the revised version.

21. The resolution adopted by the First Committee was submitted to the Conference in the Committee's report on its work.[25] The resolution was adopted without discussion, by the Conference, at its twentieth plenary meeting.[26] The clause in the article on bays stating that the provisions of the article did not apply to "historic bays" was adopted in the wording proposed by the International Law Commission and quoted above in paragraph 2 of this paper.

22. In consequence, the following resolution dated 27 April 1958 was transmitted to the General Assembly:

"The United Nations Conference on the Law of the Sea,

"Considering that the International Law Commission had not provided for the régime of historic waters, including historic bays,

"Recognizing the importance of the juridical status of such areas,

"Decides to request the General Assembly of the United Nations to arrange for the study of the juridical régime of historic waters, including historic bays, and for the communication of the results of such study to all States Members of the United Nations."

23. The General Assembly, at its 752nd plenary meeting on 22 September 1958, placed on the agenda of its thirteenth session the item "Question of initiating a study of the juridical régime of historic waters, including historic bays" and referred it to the Sixth Committee. After a short discussion, the Committee adopted and recommended to the General Assembly a draft resolution whereby the Assembly would postpone consideration of the question to its fourteenth session. This draft resolution was approved by the General Assembly at its 783rd plenary meeting, on 10 December 1958.[27]

24. At its fourteenth session, the General Assembly again referred the item to the Sixth Committee which discussed it at its 643rd to 646th meetings.[28] In the course of the debate some representatives discussed the substance of the question, but most of the speakers reserved their position on the substance and limited themselves to the problem of how the study of the question should be organized. In the end there was general agreement that the study of the question should be entrusted to the International Law Commission. The Sixth Committee unanimously adopted and submitted to the General Assembly a draft resolution to that effect, and at its 847th plenary meeting on 7 December 1959, the Assembly adopted the following resolution 1453 (XIV):

"The General Assembly,

"Recalling that, by a resolution adopted on 27 April 1958, the United Nations Conference on the Law of the Sea requested the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays, and for the communication of the results of the study to all States Members of the United Nations,

"Requests the International Law Commission, as soon as it considers it advisable, to undertake the study of the question of the juridical régime of historic waters, including historic bays, and to make such recommendations regarding the matter as the Commission deems appropriate."

25. General Assembly resolution 1453 (XIV) was included in the agenda of the twelfth session of the International Law Commission and discussed at its 544th meeting on 20 May 1960.[29] As might be expected, the discussion mainly dealt with the methods of the study to be undertaken.

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[23] Op. cit., pages 197-198.

[24] A/CONF.13/C.1/L.158/Rev.1, op. cit., page 252.

[25] *Official Records of the United Nations Conference on the Law of the Sea, Volume II, Plenary Meetings*, page 125.

[26] Op. cit., page 68.

[27] See *Official Records of the General Assembly, Thirteenth Session, Sixth Committee*, 597th and 598th meetings and annexes to agenda item 58.

[28] Op. cit., *Fourteenth Session, Sixth Committee*, 643rd to 646th meetings and annexes to agenda item 58.

[29] *Yearbook of the International Law Commission, 1960*, volume I, pages 111-116.

26. According to one school of thought which turned out to be the minority opinion, the Commission should invite the Member States to send to the Secretariat all available documentation concerning those historic waters, including historic bays, which were subject to their jurisdiction and to indicate the régime claimed by them for these waters. Only from such data provided by Governments could the Commission, according to this view, learn the rules of customary international law concerning historic waters. Although it was not the task of the Commission to decide on particular claims to these waters, nevertheless, it must discover what bays and other waters were claimed as historic and on what grounds, in order to be able to determine the principles governing the juridical régime of historic waters on the basis of existing international custom.

27. The majority of the members of the Commission, on the other hand, feared that if Governments were invited to specify their claims to historic waters they might be tempted, as a matter of prudence, to protect their position by advancing all their claims, including possibly some totally new ones. They might also thereby commit themselves to a rigid attitude which could make a solution of the problem more difficult in the future. Furthermore, possibly exaggerated claims would not be a suitable basis for the formulation of principles on the matter. Those members who held this opinion therefore felt that the Commission should first determine the principles governing the matter and then invite the Governments to comment on those principles. If the Governments so wished they could, of course, in their observations on the principles, refer to particular claims to historic waters.

28. While the majority of the members of the Commission were against requesting information from Governments at the present stage, they considered that in order to expedite the Commission's work in this field, some action should be undertaken forthwith. It was therefore decided to request the Secretariat to follow up the work begun by the preparation of the memorandum on "historic bays" mentioned above in paragraph 8. This decision was set out in paragraph 40 of the Commissions' report on its twelfth session (A/4425) as follows:

> "... The Commisson requested the Secretariat to undertake a study of the juridical régime of historic waters, including historic bays, and to extend the scope of the preliminary study outlined in paragraph 8 of the memorandum on historic bays prepared by the Secretariat in connexion with the first United Nations Conference on the Law of the Sea ..."

29. Paragraph 8 of the memorandum referred to in the quotation reads:

> "8. As indicated in part II of this paper, the theory of historic bays is of general scope. Historic rights are claimed not only in respect of bays, but also in respect of maritime areas which do not constitute bays, such as the waters of archipelagos and the water area lying between an archipelago and the neighbouring mainland; historic rights are also claimed in respect of straits, estuaries and other similar bodies of water. There is a growing tendency to describe these areas as 'historic waters', not as 'historic bays'. The present memorandum will leave out of account historic waters which are not also bays. It will, however, deal with certain maritime areas which, though not bays *stricto sensu*, are of particular interest in this context by reason of their special position or by reason of the discussion or decisions to which they have given rise."

30. It is apparent from what has been said above that the subject-matter of the study to be undertaken is wider in scope than the subject-matter of the memorandum on "historic bays" (A/CONF.13/1) prepared by the Secretariat with the purpose of shedding light on the clause exempting such bays from the provision of the article on bays contained in the International Law Commission's draft on the law of the sea. The subject-matter was widened to include also other "historic waters" than "historic bays". On the other hand, very little information can be gathered from the discussions related above as to the scope and meaning of the term "historic waters" or as to the relationship between that term and the term "historic bays". This was to be expected as the discussion was mainly concerned with methods and procedures for dealing with the matter. Moreover, as will be seen below, the question of the relationship between the terms "historic bays" and "historic waters" does not involve major problems.

31. Another point which clearly emerges from the foregoing is that the study at the present stage should not have as its purpose to attempt to establish a list of existing "historic bays" and other "historic waters". As far as "historic bays" are concerned, the previous Secretariat memorandum (A/CONF.13/1) contains a comprehensive enumeration of such bays and it would be difficult to make useful additions thereto without consulting the Governments.[30]

32. The purpose of the study should rather be to discuss the principles of international law governing the régime of "historic waters". The question then arises how these principles can be ascertained. The proper inductive method would be to study the particular cases of "historic waters" and see what common principles can be abstracted from them. This procedure would, however, seem to require that the first step should be to establish a collection of cases which would be as complete as possible. That would mean that the Governments must be approached with a request to provide information. On the other hand, if not every governmental claim to "historic waters" is to be accepted, some principles would be needed in the light of which the claims could be evaluated. Theoretically at least, there seems to be a dilemma here: in order to decide whether a claim to "historic waters" is rightful, it is necessary to have principles of international law by which the claims can be appraised, but in order not to be arbitrary these principles must be based on the actual practice of States in these matters. As usual the dilemma can be solved only in a pragmatic way. There is already available considerable material in the form of known claims to "historic waters", discussions of the subject in the literature of international law and previous attempts to establish and formulate the relevant principles. Most of the material has already been recorded in the Secretariat memorandum on "historic bays" (A/CONF.13/1). On this basis it is possible to analyse and discuss important aspects of the question and to arrive at certain tentative conclusions which can be further developed and where necessary modified in the light of information and observations received at a later stage from Governments. The present paper is conceived as a contribution to this initial or tentative discussion of the subject. Its purpose is to bring to

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[30] The question of establishing a list of historic waters is discussed more extensively below in paragraphs 168-176.

light, analyse and discuss problems connected with the subject rather than to present complete solutions to these problems. In order to be useful and to advance the study of the relevant problems, the paper must go beyond the mere enumeration of the various opinions expressed in theory and practice. Without presuming to give judgements on these opinions, it will sometimes be necessary to point out difficulties which seem to be inherent in some of them and to express a preference for others.

II. Juridical régime of historic waters, including historic bays

A. Preliminary explanation of the terms "historic waters" and "historic bays"

33. It is hardly necessary to go deeply into the matter of "historic waters" to realize that this is a subject where superficial agreement among authors and among practitioners conceals several controversial problems as well as some obscurity or at least lack of precision. Nobody would contest that there are cases in which a State has a valid historic title to certain waters adjacent to its coasts, but when it comes to a more precise definition of this title, its relation to the rules of international law for the delimitation of the maritime territory of a State or the question of the circumstances in which the historic title may arise, agreement is far from complete. Although it would have been convenient to be able to give, at the outset, a definition of "historic waters", this is therefore not possible. Without an examination and discussion of the controversial problems involved, the presentation of a definition would be premature. Furthermore, as was said above, the purpose of the present preparatory study is not so much to provide ready-made solutions to the relevant problems as to indicate these problems and so to prepare the way for the International Law Commission's consideration of the matter. In other words, in the paper an attempt will be made to set forth, analyse and clarify a number of problems connected with the concept or theory of "historic waters", departing from the fact that it is universally recognized in the doctrine and practice of international law that States may under certain circumstances on historic grounds have valid claims to certain waters adjacent to their coasts.

34. One of the lesser problems which, at least in a preliminary way, should be clarified is the terminological question arising from the use in theory and practice rather indiscriminately of the terms "historic bays" and "historic waters". These two terms are obviously not synonymous; the latter term has a wider scope, as is also apparent from the expression used in the resolutions of the Conference on the Law of the Sea and the General Assembly, namely, "historic waters, including historic bays". It is a fact that the term "historic bays" is more frequently used or has until recent times been more frequently used than "historic waters". This circumstance cannot, however, be taken as evidence that the more general view is that only bays, not other waters, may be claimed by States on an historic basis. On the contrary, it can be said that all those authorities who have directed their attention to the problem seem to agree that historic title can apply also to waters other than bays, i.e., to straits, archipelagos and generally to all those waters which can be included in the maritime domain of a State. If the term "historic bays" has been used more frequently than "historic waters", this is mainly due to the fact that claims on an historic basis have been made more often with respect to what were called or considered to be bays than to other waters. In principle, as was said in the Secretariat memorandum (A/CONF.13/1), referred to above in paragraph 29, "the theory of historic bays is of general scope", i.e., it applies also to other maritime areas than bays. Sir Gerald Fitzmaurice no doubt expressed a generally held opinion when he stated that:

> "... there seems to be no ground of principle for confining the concept of historic waters merely to the waters of a bay... Even if the cases would in practice be fewer, a claim could equally be made on an historic basis to other waters..."[31]

It may be of interest to note that in the *Fisheries* case between the United Kingdom and Norway, both parties agreed that the theory of "historic waters" was not limited to bays.[32] It will be seen below that the legal status of "historic bays" may be different from that of other "historic waters", but that circumstance obviously does not weaken the position that an historic title can exist to other waters than bays.

35. It is easily discernible that many of the problems and difficulties inherent in the theory of "historic waters" have their origin or are conditioned by the circumstances in which the theory arose and was developed. A short description of the background of the theory, in fact and in law, should therefore facilitate its understanding.

B. Concept of "historic waters"

1. *Background*

36. There are above all two factors which have contributed to the emergence and development of the concept of "historic waters". One important factor was the controversial status of the international legal rules relating to the delimitation of the maritime territory of the State. Without taking a position regarding the question whether or not there ever was a generally accepted maximum width of the territorial sea or a maximum breadth of the opening of bays, it can safely be said that these questions through the ages were enveloped in controversy and therefore appeared to both lawyers and laymen as subject to doubt. In these circumstances it was natural that States laid claim to and exercised jurisdiction over such areas of the sea adjacent to their coasts as they considered to be vital to their security or to their economy. When a controversy arose after a State had for some time exercised jurisdiction over such an area of the sea, and the opponent State alleged that, according to the general rules of international law relating to the delimitation of territorial waters, the area in question was outside such waters, it was also natural for the defendant State to reply not only that it had a different opinion about the content of the applicable rule of general international law but also that by force of long usage it now had an historic title to the area. In the course of time there occurred quite a number of cases in which a State

[31] *British Year Book of International Law*, vol. 31 (1954), page 381; see also Gidel, *Droit international public de la mer*, vol. III (1934), page 651, and the Norwegian Counter-Memorial in the *Fisheries* case, paragraphs 539, 549 and 557-560; *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, volume I, pages 548, 557 and 564-566, and British reply, paragraphs 471-472, *op. cit.*, vol. II, pages 643-645; Cf. also the report of the Second Committee in *Acts of the Conference for the Codification of International Law (1930)*, vol. III, page 211.

[32] Cf. *op. cit.*, vol. II, page 643.

asserted its sovereignty, based on historic rights, over certain maritime areas, whether or not according to general international law rules such areas might be outside its maritime domain. No attempt will be made in this paper to enumerate these cases; an enumeration and description of many of them may be found in the Secretariat's memorandum on "historic bays" (A/CONF.13/1), pages 3 *et seq.*

37. The second important factor in the development of the concept and theory of "historic waters" was the attempts, official and unofficial, to substitute for the controversial and doubtful international law relating to the delimitation of territorial waters a set of clear-cut, generally acceptable, written rules on the subject. For various such projects, reference may also be made to the aforementioned Secretariat memorandum (A/CONF.13/1), pages 14 *et seq.* As pointed out in that memorandum (pages 2-3), a codification of the international law rules relating to the delimitation of territorial waters and in particular regarding the delimitation of bays would in several cases have conflicted with existing situations. In other words, considerable maritime areas over which States claimed and exercised sovereignty would, if the codification were accepted, fall outside the jurisdiction of these States and belong instead to the high seas. It is obvious that a codification having such consequences would not commend itself to the States affected. The proposed rules would stand a better chance of being accepted if they included a clause excepting from its regulations waters to which a State had a historic title. As a consequence, the proposed codifications dealing with the delimitation of territorial waters generally contained such clauses in varying formulations. The concept of "historic waters" came to be considered as an indispensable concept without which the task of establishing simple and general rules for the delimitation of maritime areas could not be carried out. Gidel expresses this thought when he says:

> "The theory of 'historic waters', whatever name it is given, is a necessary theory; in the delimitation of maritime areas, it acts as a sort of safety valve; its rejection would mean the end of all possibility of devising general rules concerning this branch of public international law . . .".[33]

38. In summary, the concept of "historic waters" has its root in the historic fact that States through the ages claimed and maintained sovereignty over maritime areas which they considered vital to them without paying much attention to divergent and changing opinions about what general international law might prescribe with respect to the delimitation of the territorial sea. This fact had to be taken into consideration when attempts were made to codify the rules of international law in this field, i.e., to reduce the sometimes obscure and contested rules of customary law to clear and generally acceptable written rules. It was felt that States could not be expected to accept rules which would deprive them of considerable maritime areas over which they had hitherto had sovereignty. The Second Committee of the 1930 Hague Codification Conference said in its report:

> "One difficulty which the Committee encountered in the course of its examination of several points of its agenda was that the establishment of general rules with regard to the belt of the territorial sea would, in theory at any rate, effect an inevitable change in the existing status of certain areas of water. In this connection, it is almost unnecessary to mention the bays known as 'historic bays'; and the problem is besides by no means confined to bays, but arises in the case of other areas of water also. The work of codification could not affect any rights which States may possess over certain parts of their coastal sea, and nothing, therefore, either in this report or in its appendices, can be open to that interpretation."[34]

39. The circumstance that the existence of historic rights to certain areas of the sea came to be of particular interest in connexion with the endeavour to formulate general rules of international law on the delimitation of the territorial sea had as a consequence a tendency to consider the juridical régime of "historic waters" as an exceptional régime. The protagonists of the codification of international law in this field understood that, as a practical matter, a long-standing exercise of sovereignty over an area of the sea could not suddenly be invalidated because it would not be in conformity with the general rules being formulated. On the other hand, as the purpose of the codification was the establishment of general rules it was natural to look upon these historic cases as exceptions from the rule. Gidel succinctly expressed this view as follows:

> ". . . while the theory of historic waters is a necessary theory, it is an exceptional theory . . .".[35]

40. Whether or not the régime of "historic waters" is an exceptional régime may seem to be an academic question. In reality, it is of practical importance with respect to the question of what is needed to establish title to such waters. If the right to "historic waters" is an exceptional title which cannot be based on the general rules of international law or which may even be said to abrogate these rules in a particular case, it is obvious that the requirements with respect to proof of such title will be rigorous. In these circumstances the basis of the title will have to be exceptionally strong. The reasons for accepting the title must be persuasive; for how could one otherwise justify the disregarding of the general rule in the particular case? To quote Gidel again:

> "The costal State which makes the claim of 'historic waters' is asking that they should be given exceptional treatment; such exceptional treatment must be justified by exceptional conditions."[36]

41. Both from the theoretical and from the practical point of view, it is therefore important to examine, analyse and clarify the notion that the régime of "historic waters" is an exceptional régime.

2. *Is the régime of "historic waters" an exceptional régime?*

42. It is probably true that, at least among the writers on the subject, the dominant opinion is that "historic waters" constitute an exception to the general rules of international law governing the delimitation of the maritime domain of a State. Gidel has been quoted above as an adherent of that opinion. His thoughts on the matter are expressed in greater detail in the following passage:

[33] Gidel, *op. cit.*, page 651.

[34] *Acts of the Conference for the Codification of International Law, Meetings of the Committee*, volume III: Minutes of the Second Committee (Series of League of Nations publications, V.Legal.1930.V.16), page 211.

[35] Gidel, *op. cit.*, page 651.

[36] Gidel, *op. cit.*, page 655.

"An examination of the facts shows: (1) that certain States have claimed as part of their maritime domain waters which under the generally accepted rules applicable in principle to such areas would have had to be considered as part of the high seas, and (2) that such claims have often been recognized by other States.

"This state of affairs has given rise to a theory commonly referred to as the theory of 'historic bays': it has tried, with varying success, to identify a possible link between these different exceptional situations, whose only common feature appears to be their derogation from the generally accepted rules. Since it is necessary, if the general rule is not to be destroyed, to limit the claims of States tempted to nullify the generally recognized rules for determining areas that have a juridical status other than that of the high seas, the 'historic bays' theory has aimed at making such derogations subject to certain conditions, on which agreement, both in the doctrine and in practice, appears not to be complete."[37]

In this statement the exceptional character of "historic waters" is strongly emphasized as well as the necessity of limiting claims of this nature in order not to jeopardize the general rules regarding the delimitation of the maritime domain of States. It is also interesting to note that Gidel mentions two facts as bases of the concept of historic waters: a claim by a State to a maritime area which according to the general rules would be high seas, and the recognition by the other States of this exceptional claim. This indicates the connexion, according to this view, between the exceptional nature of the claim and a requirement that in order to be the basis of a valid title, the claim has to be combined with some form of recognition by the other States. We shall come back to this important proposition later. Here it is sufficient to point out the connexion as it appears in Gidel's statement.

43. A similar position is taken by another prominent authority on these matters. In an article discussing the law and procedure of the International Court of Justice, Sir Gerald Fitzmaurice says with reference to the *Fisheries* case between the United Kingdom and Norway:

"The Norwegian contention was essentially an attempt to remove from the conception of 'historicity' of given rights, the element of *prescription*, that is, in effect, the element of an *adverse* acquisition of rights in the face of existing law. Yet this element is of the essence of the matter, for a title or right based on historic considerations only becomes material when (and indeed assumes that) the actions involved are not or could not be justified according to the recognized rules, and can therefore be justified, if at all, only by reference to some special factor such as an historic [illegible]t.

"As was [illegible]ested in the United Kingdom's written reply in [illegible] *Fisheries* case, this right takes the form essentially of a 'validation in the international legal order of a usage which is intrinsically invalid, by the continuance of the usage over a long period of time'."[38]

Sir Gerald is here referring to the subsidiary issue in the *Fisheries* case whether Norway, even if the general rules of international law did not allow it to do so, had an historic right to delimit its waters in the manner provided by the Norwegian legislation and opposed by the United Kingdom. In his view, such an historic right would be an adverse acquisition of certain maritime areas, an acquisition on the basis of a title which in the particular case would constitute an exception to or an abrogation of the general rule. A similar thought is expressed in the following passage from another article of his on the law and procedure of the Court:

"It has for long been part of international law that, on a basis of long-continued use and treatment as part of the coastal domain, waters which would not otherwise have that character may be claimed as territorial or as internal waters . . .".[39]

44. In the opinion of Sir Gerald, the exceptional nature of the historic title also has as a consequence that some form of acquiescence on the part of other States is necessary.[40] Further attention to this aspect of the problem will be given below.

45. Other authors who consider the régime of "historic waters" to be an exception to the general rules are, e.g., Westlake, Fauchille, Pitt-Cobbett, Higgins and Colombos, Balladore Pallieri and others. Pertinent quotations from their works are found in the Secretariat memorandum on "historic bays" (A/CONF.13/1), pages 18-20.

46. The view that "historic waters" constitute an exception to the generally valid rules regarding the delimitation of maritime areas was argued by the United Kingdom in the *Fisheries* case. A summary of its position is set out in the reply of the United Kingdom as follows:

"(i) A State is entitled to a belt of territorial waters of a certain breadth—the generally accepted limit is three miles—but Norway has an historic or prescriptive title to a belt of four miles.

"(ii) The belt of territorial waters must be measured from a base-line, which, subject to certain exceptions, must follow the low-water mark on the land.

"(iii) Where there are bays or similar indentations of the coast (whatever name these indentations have) which are of a certain character and where there are islands off the coast, there are rules of general international law which permit the base-line of territorial waters to cease to follow low-water mark on the land and to enclose as national waters certain areas of sea.

"(iv) A State can only establish a title to areas of sea which do not come within these general rules of international law on the basis of an historic or prescriptive title."[41]

47. In the opinion of the United Kingdom there were two essential elements in such an historic or prescriptive title, namely:

"(i) Actual exercise of authority by the claimant State;

"(ii) Acquiescence by other States."[42]

48. The connexion between the exceptional character of the claim to an historic title and the requirement of acquiescence by other States is clear from the following statement by the United Kingdom:

[37] Gidel, op. cit., pp. 621-623.

[38] *British Year Book of International Law*, vol. 30 (1953), pages 27-28.

[39] Op. cit., vol. 31 (1954), page 381.

[40] See op. cit., vol. 30 (1953), pages 27 *et seq.*

[41] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. II, page 302.

[42] Op. cit., page 303.

". . . where the claim goes beyond what is accepted under general customary international law, it is the acquiescence of other States, express or implied from long usage, that sets the seal of legal validity upon the exceptional claim".[43]

49. In contrast to this theory according to which the régime of "historic waters" is an exceptional régime, there is another opinion which denies that there exist general rules of international law regarding the delimitation of bays and other maritime areas from which the régime of "historic waters" could be an exception. In a study on "historic bays"[44] Bourquin has developed this line of thought. He says that:

". . . Before taking a position on the theory of 'historic bays', one must ask oneself whether ordinary law subjects the delimitation of territorial bays to strict rules. The answer to this question cannot fail to influence the way in which one regards the practical importance and juridical function of historic titles.

"Is there a rule, valid for all States, which would limit the width of the opening of territorial bays to a given distance? More precisely, has the so-called ten-mile rule, generally advanced by those who favour a rigid delimitation, been consecrated by customary law?"[45]

50. After having reached the conclusion that no such fixed limitation of the opening of a bay exists in general international law and that in any case:

"The character of a bay depends on a combination of geographical, political, economic, historical and other circumstances . . ."[46]

he continues:

"If it is agreed that the solution given by ordinary law to the problem of the territoriality of bays is not a matter of a mathematical limitation of their width but depends on an appreciation of the various elements that make up the character of the particular bay, the notion of 'historic titles' assumes a meaning that is quite different from that given it by those who favour the ten-mile rule. 'Historic title' no longer has the function of making an otherwise illegal situation legitimate. It is no longer a means whereby the coastal State can include a part of the high seas in its domain. It is no longer connected with the idea of usucapion. It is one element along with others characterizing a particular state of affairs, which must be considered as a whole and in its various aspects.

"Where long usage is invoked by a State, it is a ground additional to the other grounds on which its claim is based. In justification of its claim, it will be able to point not only to the configuration of the bay, to the bay's economic importance to it, to its need to control the bay in order to protect its territory, etc., but also to the fact that its acts with respect to the bay have always been those of the sovereign and that its rights are thus confirmed by historical tradition."[47]

51. As he does not consider the régime of historic bays as a deviation from general rules of international law, Bourquin is inclined to de-emphasize the importance of the acquiescence of other States. The historic title is for him "a juridical consolidation by the effect of time",[48] and such title is created by "the peaceful and continuous exercise of sovereignty".[49] Therefore,

"While it is wrong to say that the acquiescence of these States [foreign States] is required, it is true that if their reactions interfere with the peaceful and continuous exercise of sovereignty, no historic title can be formed."[50]

As said before, this question will be further analysed later on; the purpose of mentioning it here is to point out the connexion between the author's concept of "historic bays" and his attitude regarding the requirement of acquiescence on the part of foreign States.

52. In the *Fisheries* case, Norway took a similar position. The argument was, however, not limited to "historic bays" but referred to "historic waters" in general:

"In sum, it is not at all the function of an historic title, as conceived by the Norwegian Government and invoked in the present case, to legalize an otherwise illegal situation, but rather to confirm the validity of a situation.

"The Norwegian Government does not believe it necessary to discuss to what extent parts of the high seas may be included in the maritime domain of the State by virtue of an historic title, since the question does not arise in this case. It would only arise if the general rules which the United Kingdom Government alleges to be applicable to the delimitation of the maritime domain were really in force. But, the Norwegian Government has demonstrated that they are not and that they have never acquired the stability of customary rules . . .

"The Norwegian Government recognizes that the usage on which an historic title is based must be peaceful and continuous, and consequently that the reaction of foreign States constitutes an element to be taken into account in an appreciation of such title; but it completely rejects the thesis of the adverse Party that the aquiescence of other States is the only basis of an historic title, which would then be virtually indistinguishable from the juridical institution of recognition.

"The Norwegian Government considers that the absence of reaction by other States endows usage with the peaceful and continuous character it must have in order to give rise to an historic title.

"As to the consequences that must be deemed to ensue in this connexion from opposition by certain States, the Norwegian Government believes that it is a specific question, that each case must be judged in the light of its circumstances; that not all protests can be placed on the same footing; that, in any case, isolated opposition is incapable of preventing the creation of an historic title; and that in decisions in such matters one should bear in mind the wise counsel of the maxim *quieta non movere*."[51]

53. Also Counsel for Norway said, as quoted by the Court in its judgement:

"The Norwegian Government does not rely upon history to justify exceptional rights, to claim areas of

[43] Op. cit., page 621.

[44] Bourquin, "Les baies historiques" in *Mélanges Georges Sauser-Hall* (1952), pages 37-51.

[45] Op. cit., page 39.

[46] Op. cit., page 42.

[47] Op. cit., pages 42-43.

[48] Op. cit., page 45.

[49] Op. cit., page 46.

[50] *Ibid.*

[51] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. III, pages 461-462.

sea which the general law would deny; it invokes history, together with other factors, to justify the way in which it applies the general law."[52]

54. Without passing judgement on these two opposing opinions, it may be pointed out that there seem to be certain difficulties inherent in the view that title to "historic waters" is an exception to the general rules of international law regarding the delimitation of the maritime domain of the State and that such title therefore must be based on some form of acquiescence on the part of the other States. If such general rules exist, and whatever their contents may be, they must obviously be customary rules. When the Geneva Convention on the Territorial Sea and the Contiguous Zone comes into force and is widely ratified, this situation will change to a certain extent.[53] For the present, however, the general rules in this field from which the régime of "historic waters" would be an exception could only be customary rules. This means that both the general rules and the title to "historic waters" would be based on usage. Why then should the latter be considered as exceptional and also inferior with regard to its validity, so that the acquiescence of the other States would be necessary to validate the title? The facts on which the title to "historic waters" are based belong to the usage in this field, no less than the facts on which the general customary rules would be based. And the *opinio juris* exists in the case of "historic waters" just as much as in the case of the so-called general rules.

55. If there are general rules in this field, the most that could be asserted is that, within the framework of customary international law, certain maximum limits for the territorial sea and the width of the opening of bays are generally applicable and that in certain cases there exists an historic title to waters which do not come within these limits. The so-called general rules would then be "general" in the sense only that they would be more generally applicable than the "exceptional" title to "historic waters". But they would not be "general" in the sense of having a superior validity in relation to the "exceptional" historic title. Both the general rules and the historic title would be part of customary international law, and there would be no grounds for claiming *a priori* that the historic title is valid only if based on the acquiescence of the other States.

56. However, it might be doubted whether it is even possible in this manner to distinguish within the framework of customary international law between a "general" régime and an "exceptional" régime based on an historic title. It may well be argued that a distinction between "general" and "exceptional" in this case would be wholly arbitrary. It could be said that only by *a priori* classifying certain cases as exceptional, or by *a priori* classifying certain cases as normal, can one arrive at general customary rules regarding such questions as the limits of the territorial sea, bays, etc.

57. Furthermore, it may even be doubted whether there exist at present any general customary rules regarding the delimitation of the maritime domain of States. The fact is that through the ages many conflicting opinions have been expressed in the doctrine and in practice on these problems and that claims to maritime areas have been made by States on grounds which have varied greatly both within the same period of time and from one time to another. International doctrine and practice therefore present a rather confusing picture in this respect. It is to be expected that the Geneva Conventions will, when they come into force, bring more stability to this field, but as far as the customary law is concerned the situation is far from clear.

58. If that is true, the view that the régime of "historic waters" is an exceptional régime which deviates from certain precise general rules of customary international law becomes even more doubtful. If the rules of customary international law on fundamental questions such as the breadth of the territorial sea or the width of the opening of bays are in dispute between the States, where are the general rules from which the historic title would be an exception? In these circumstances, would not the most realistic view be not to relate the claim or right to "historic waters" to any general customary rules on the delimitation of maritime areas, as an exception or not an exception from such rules, but to consider the title to "historic waters" independently, on its own merits.[54]

59. It follows that also the problem of the elements constituting title to "historic waters" and the question of proof have to be considered independently and not on the assumption that the title to "historic waters" constitutes an exception to general international law. In particular, the question if, or to what extent, a claim by a State to "historic waters" is subject to the acquiescence of other States has to be studied without being prejudiced by the *a priori* postulate that this is an exceptional claim.

60. Some authors who consider that the régime of "historic waters" is an exception to the general rules of international law regarding the delimitation of bays and other maritime areas use the existence of "historic bays" as conclusive proof of the existence of such general rules. Gidel says:

> "The simple existence of this category of 'historic bays', which is not questioned by anyone, is of itself enough to demonstrate conclusively the existence of customary international law in the matter."[55]

This argument seems based on a *petitio principii*, for only of it is already assumed that the régime of "historic bays" is an exception to certain general rules does the existence of "historic bays" imply the existence of such general rules. Sir Gerald Fitzmaurice places the argument on a more practical level:

> ". . . it must be assumed that the historic principle remains—and if this is admitted, it follows at once that international law, even if it does not impose a ten-mile limit [for bays], must still impose *some* limit, for if there were no legal limitation on the size of bays all reason for claiming a bay on historic grounds would disappear."[56]

There would, however, be a practical reason for claiming an historic title to bays or other maritime areas even if there is no generally accepted legal limitation on the size of bays or the breadth of the territorial sea. It is sufficient that the claiming State itself or other States

[52] *I.C.J. Reports, 1951*, page 133.

[53] See below, paragraphs 72-79.

[54] Cf. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927), pages 355 *et seq.*

[55] Gidel, op. cit., page 537. See also the reply of the United Kingdom in the *Fisheries* case, *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. II, page 607.

[56] *British Year Book of International Law, 1954*, page 416.

hold that there is such a limitation to make it understandable that a State may wish to base its claim on historic grounds. Only if there existed general and absolute agreement among the States that there was no limitation, would it be pointless to claim a maritime area on historic grounds. It could even be asserted that it is the *uncertainty* of the legal situation, not the certainty that general rules of international law on the matter exist, which has given rise to the claims which form the factual basis of the theory of "historic waters".

61. Intimately connected with the view that the régime of "historic waters" forms an exception to general international law is the idea that the title to "historic waters" is a kind of prescriptive right. This thought is clearly expressed in some of the statements quoted above. It may therefore be of interest briefly to examine that idea.

3. *Is the title to "historic waters" a prescriptive right?*

62. There has been much debate regarding the existence of prescription in international law.[57] Of the two main forms of prescription, "extinctive prescription" (*prescription libératoire*), or loss of a claim by failure to prosecute it within a reasonable time, has no application in the present context. In connexion with "historic waters" it is the other form of prescription, namely "acquisitive prescription" (*prescription acquisitive*), which may be of interest.

63. "Acquisitive prescription" means that a title to something, e.g., a territory, is acquired by prescription, i.e., by the lapse of time under certain circumstances. Within the category of "acquisitive prescription" two sub-categories can be distinguished. One is acquisitive prescription based on "immemorial possession". In this case the original title is uncertain. It may have been a valid title or not; in any case the long lapse of time makes it impossible to establish what the original legal situation was. This uncertainty is cured and a valid title is considered to be acquired by "immemorial possession". The existence in international law of this kind of "acquisitive prescription" does not seem to be disputed. More controversial is the question whether the other sub-category of "acquisitive prescription" has a place in international law. In this case, which is said to be akin to the *usucapio* of Roman law, the original title of the possessor is known to be defective. But because the possessor has enjoyed uninterrupted possession for a period of time under conditions which are considered to imply acquiescence (in any case tacit consent) on the part of the rightful title owner, the possessor is held to have acquired through prescription a full and complete title. Some authors have denied that this sort of acquisitive prescription exists in international law, because no fixed time for the necessary possession can be found there, in contrast to the situation in municipal law where precise time-limits are prescribed. The majority of writers, however, consider this to be a detail which should not prevent the acceptance in international law of this kind of prescription which they find necessary for the preservation of international order and stability. Some even think that no distinction should be made between the two sub-categories of "acquisitive prescription", because the "immemorial possession" cannot in practice be required to be literally "immemorial" and that therefore, as far as the lapse of time is concerned, the two sub-categories tend to merge.[58]

64. This argument for the assimilation of the two sub-categories is, however, hardly sufficient. There is another important difference between them, namely, a difference with respect to the original title. In one case the original title is uncertain, in the other case it is known to be defective. It would seem that the requirements for remedying uncertainty should be less stringent than those necessary to cure known illegality.

65. To what extent can the concept of prescription be applied to "historic waters"? This problem has to be approached with some circumspection, for although there seems to be no reason why prescription should not apply to maritime areas as well as to areas of land, that does not necessarily mean that acquisitive prescription in both its forms is applicable to "historic waters". If, for instance, there is a dispute between two States regarding the sovereignty over a certain area of water, it is thinkable that one of the parties to the dispute might base its case on a prescriptive right to the area. But that would hardly be a case of "historic waters". The theory of "historic waters" is not used to decide whether a maritime area belongs to one State or another. "Historic waters" are not waters which originally belonged to one State but now are claimed by another State on the basis of long possession. They are waters which one State claims to be part of its maritime territory while one or more other States may contend that they are part of the high seas. To what extent then is prescription applicable to this latter situation?

66. As far as the first form of acquisitive prescription is concerned, i.e., prescription based on "immemorial possession", this kind of prescriptive right does not seem to differ much from the historic title envisaged in the theory of "historic waters". It refers to a situation where the original title is uncertain and is validated by long possession. It is approximately the same situation as in the case of "historic waters". If nothing more is implied in the term "prescriptive right", its application to "historic waters" seems innocuous, although not particularly useful.

67. If, on the other hand, the term "prescriptive right" refers to the second sub-category of acquisitive prescription, mentioned above, it is more difficult to accept the concept of prescription as applicable to "historic waters". In this case, prescription would mean that an originally *defective* or *invalid* title is cured by long possession. If applied to "historic waters" that would imply the assumption that according to the general rules of international law the waters were originally high seas, but that through the effect of time (in the proper circumstances) an exceptional historic title to the waters had emerged in favour of the coastal State. In other words, to consider the title to "historic waters" as a prescriptive right in this latter sense would really be to embrace the idea that the title to "historic waters" is an exception to the general rules of international law regarding the delimitation of maritime areas.

68. It is to be feared that this is usually what is implied when the term "prescriptive right" is used in connexion with "historic waters". In order to avoid that by the use of that term unwarranted assumptions are

[57] See, for instance, Oppenheim, *International Law*, vol. I, 8th ed. (1955), pages 575-578; Verykios, *La prescription en droit international public* (1934); Soresen in *Acta Scandinavica Juris Gentium*, vol. 3 (1932), pages 145-170; Johnson in *British Year Book of International Law*, vol. 27 (1950), pages 332-354; Pinto "La prescription en droit international", in *Recueil des Cours de l'Académie de Droit International*, vol. 87 (1955-I), pages 391-449.

[58] Cf. Johnson, op. cit., pages 339-340.

brought into the argument, it would therefore be preferable not to refer to the concept of prescription in connexion with the régime of "historic waters".[58]

4. Relation of "historic waters" to "occupation"

69. Another term which is occasionally used in connexion with "historic waters" is "occupation", and it may therefore be useful briefly to examine whether there is a significant relation between these two concepts.

70. As is well known, occupation is an original mode of acquisition of territory. It is defined by Oppenheim as follows:

> "Occupation is the act of appropriation by a State by which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another State."[59]

A similar definition is given by Fauchille:

> "Generally speaking, occupation is the taking by a State, with the intention of acting as the owner, of something which does not belong to any other State but which is susceptible of sovereignty."[60]

Both authors agree that because of the freedom of the high seas, those seas cannot be the object of occupation.[61]

71. This doctrine that occupation is an original mode of acquisition of territory but one which is not applicable to the high seas seems to be generally accepted at the present time. A State could therefore hardly claim an area of water on the basis of occupation unless it affirmed that the occupation took place before the freedom of the high seas became part of international law. In that case the State would claim acquisition of the area by an occupation which took place long ago. Strictly speaking, the State would, however, not assert an historic title but rather an ancient title based on occupation as an original mode of acquisition of territory. The difference may be subtle but should in the interest of clarity not be overlooked: to base the title on occupation is to base it on a clear original title which is fortified by long usage.

5. "Historic waters" as an exception to rules laid down in a general convention

72. The difficulties inherent in the conception that the régime of "historic waters" is an exception to customary law have been discussed above. What is the situation when the customary rules of international law regarding the delimitation of the maritime domain of the State are codified? Does the régime of "historic waters" then become an exceptional régime in the sense that strict requirements regarding the establishment of an area as "historic waters" are justified? To give an answer, it is necessary to study the content of the codified rules, the circumstances in which the rules were adopted and the intention of the parties accepting them.

73. As the nearest approach to a codification of the rules of international law regarding the territorial sea, the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone is of particular interest. As mentioned above, references to historic title occur in articles 7 and 12 of that Convention. Article 7, which deals with bays the coasts of which belong to a single State, contains a final paragraph stating that the foregoing provisions of the article shall not apply to so-called "historic bays". In paragraph 1 of article 12, regarding the delimitation of the territorial seas of States whose coasts are opposite or adjacent, there is a clause saying that the provisions of the paragraph shall not apply where by reason of historic title it is necessary to delimit the territorial seas in a different manner.

74. It seems to be clear both from the texts and from the relevant discussions at the Conference, related above in the first section of this paper, that the purpose of these exception clauses in articles 7 and 12 was to maintain with respect to the historic titles mentioned the *status quo ante* the entry into force of the Convention. As was indicated previously in this paper, the Second Committee of the 1930 Hague Codification Conference took the position in its report that the proposed codification of the rules of international law regarding territorial waters should not affect the historic rights which States might posseas over certain parts of their coastal sea. Articles 7 and 12 show that the 1958 Geneva Conference on the Law of the Sea took the same position regarding historic rights in relation to bays bordered by a single State or the delimitation of the territorial seas of States whose coasts are opposite or adjacent to each other.

75. The question arises, however, what the situation is in cases where the historic title has not been expressly reserved in the Convention. In principle, it seems that the answer must be: if the provisions of an article should be found to conflict with an historic title to a maritime area, and no clause is included in the article safeguarding the historic title, the provisions of the article must prevail as between the parties to the Convention. This seems to follow *a contrario* from the fact that articles 7 and 12 have express clauses reserving historic rights; articles without such a clause must be considered not to admit an exception in favour of such rights.

76. Obviously the situation is different where a certain subject-matter has not been regulated by the Convention. Such is the case with respect to bays, the coasts of which belong to two or more States, and also in regard to the breadth of the territorial sea. Here the subject-matter is left completely untouched by the Convention; and as the Convention contains no relevant general rules, it would of course be pointless to reserve historic rights in this respect.[62]

77. Three hypotheses may therefore be envisaged:

(i) The historic title relates to maritime areas not dealt with by the Convention and the Convention has consequently no impact on the title;

(ii) The historic title relates to areas dealt with by the Convention but is expresaly reserved by the Convention. Also in this case the Convention has no impact on the title;

(iii) The historic title is in conflict with a provision of the Convention and is not expressly reserved by the Convention. In that case, the historic title is superseded as between the parties to the Convention.

78. One can, of course, say in a certain sense that an historic title which is expressly reserved, as is the case in articles 7 and 12 of the Convention, thereby is implicitly qualified as an exception. But it must not be forgotten that the whole purpose of making the historic title an exception from the general rules contained in the main provisions of the relevant article is to *maintain* the historic title. It is not the intention, by excepting it, to subject the historic title to stricter requirements but to maintain the *status quo ante* with respect to the title. It would therefore be a fallacy if, from the fact that the Convention in certain cases excepts historic rights, one would draw the conclusion that the Convention requires stricter proof of the historic title than was the case before the conclusion of the Convention. In reality, the Convention simply leaves the matter, both regarding the existence of the title and the proof of the title, in the state in which it was at the entry into force of the Convention.

79. The above discussion of the general aspects of the concept of "historic waters", its relation to general international law and to certain other concepts such as prescription and occupation, has cleared the way for a more concrete study of the juridical régime of "historic waters". The first problem to be taken up is the question, what conditions must be fulfilled in order that an historic title to water areas may arise or, in other words, the question of the elements constituting a title to "historic waters".

C. Elements of title to "historic waters"

80. There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient.

81. Besides the three factors just referred to a fourth is sometimes mentioned. It has been suggested that attention should also be given to the question whether the claim can be justified on the basis of economic necessity, national security, vital interest or a similar ground. According to one view, such grounds should even be considered to form the fundamental basis for a right to "historic waters", so that they would be sufficient to sustain the right even if the historic element were lacking.

82. These various factors will be examined below. In order not to complicate the discussion unnecessarily, it is assumed that there is only one coastal State claiming historic title to the area. In a separate sub-section, the situation will thereafter be studied which arises when "historic waters" are bordered by two or more States.

83. The method to be used will be an analysis of problems and principles rather than a discussion of cases. For a more detailed presentation of both case law and opinions of writers reference may be made to the Secretariat memorandum on "historic bays" (A/CONF.13/1).

1. Exercise of authority over the area claimed

84. Various expressions are used in theory and practice to indicate the authority which a State must continuously exercise over a maritime area in order to be able validly to claim the area on the basis of an historic title. As examples may be mentioned: "exclusive authority", "jurisdiction", "dominion", "sovereign ownership", "sovereignty".[63] The abundance of terminology does not, however, mean that there is a great and confusing divergence of opinion regarding the requirements which this exercise of authority would have to fulfil. On the contrary there seems to be rather general agreement as to the three main questions involved, namely, the scope of the authority, the acts by which it can be exercised and its effectiveness.

(a) *Scope of the authority exercised*

85. There can hardly be any doubt that the authority which a State must continuously exercise over a maritime area in order to be able to claim it validly as "historic waters" is sovereignty. An authority more limited in scope than sovereignty would not be sufficient to form a basis for a title to such waters. This view, which does not seem to be seriously disputed, is based on the assumption that a claim to an area as "historic waters" means a claim to the area as part of the maritime domain of the State. It is logical that the scope of the authority required to form a basis for a claim to "historic waters" will depend on the scope of the claim itself. If, therefore, as is the generally accepted view,[64] a claim to "historic waters" means a claim to a maritime area as part of the national domain, i.e., if the claim to "historic waters" is a claim to sovereignty over the area, then the authority exercised, which is a basis for the claim, must also be sovereignty.

86. This interrelationship between the scope of the claim and the scope of the authority which the claiming State must exercise, and also the soundness of the assumption that the claim to "historic waters" is a claim to sovereignty over the waters, may be illustrated by an example. Suppose that a State asserted, on a historical basis, a limited right related to a certain maritime area, such as the right for its citizens to fish in the area. This would not in itself be a claim to the area as "historic waters". Nor could the State, even if it so wanted, claim the area as its "historic waters" on the basis of the fact that its citizens had fished there for a long time. The claim would in such case not be commensurate with the factual activity of the State or its citizens in the area. Suppose on the other hand that the State has continuously

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[58] Oppenheim, *International Law*, volume I, 8th ed. (1955), page 555.

[59] Fauchille, *Traité de droit international public*, vol. I, part 2, 8th ed. (1925), pages 680-681.

[60] Oppenheim, op. cit., page 556; Fauchille, op. cit., page 702.

[61] It may be interesting to note that while various proposals for regulating the breadth of the territorial sea were submitted at the two Geneva Conferences on the Law of the Sea, none of these proposals contained clauses reserving historic titles to certain areas of the sea. It was also fairly apparent from the discussion that the aim of the proposals was to arrive at rules which would have universal application. If any of the proposed regulations of the breadth of the territorial sea had been accepted, such regulation would then have prevailed over conflicting historic titles to maritime areas. In view of the fact that none of the proposals acquired the necessary majority, it might perhaps be worth while, if and when the question of the breadth of the territorial sea is again taken up for solution, to consider whether an agreement on a proposal might be facilitated if it contained a clause reserving historic rights.

[62] For other examples see pages 4-7, 14, 15, 16-20, 32-33 of the Secretariat memorandum on "historic bays" (A/CONF.13/1).

[63] See Gidel, op. cit., pages 625 *et seq.* and the Secretariat memorandum on "historic bays" (A/CONF.13/1), pages 21 *et seq.*

asserted that its citizens had the exclusive right to fish in the area, and had, in accordance with this assertion, kept foreign fishermen away from the area or taken action against them. In that case the State in fact exercised sovereignty over the area, and its claim, on a historical basis, that it had the right to continue to do so would be a claim to the area as its "historic waters". The authority exercised by the State would be commensurate to the claim and would form a valid basis for the claim (without prejudice to the condition that the other requirements for the title must also be fulfilled).

87. The reasoning may be summarized as follows. A claim to "historic waters" is a claim by a State, based on an historic title, to a maritime area as part of its national domain; it is a claim to sovereignty over the area. The activities carried on by the State in the area or, in other words, the authority continuously exercised by the State in the area must be commensurate with the claim. The authority exercised must consequently be sovereignty, the State must have acted and act as the sovereign of the area.[65]

88. This does not mean, however, that the State must have exercised all the rights or duties which are included in the concept of sovereignty. The main consideration is that in the area and with respect to the area the State carried on activities which pertain to the sovereign of the area. Without venturing to present a catalogue of such activities, some examples may be given to illustrate the kind of acts by which the authority required as a basis for the claim might be established.

(b) *Acts by which the authority is exercised*

89. It may be useful to begin by quoting the opinions of some prominent writers on the subject. Gidel, in discussing what he calls the *actes d'appropriation* to which the claiming State must have proceeded, states as follows:

> "It is hard to specify categorically what kind of acts of appropriation constitute sufficient evidence: the exclusion from these areas of foreign vessels or their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. It would, however, be too strict to insist that only such acts constitute evidence. In the Grisbadarna dispute between Sweden and Norway, the judgement of 23 October 1909 mentions that 'Sweden has performed various acts . . . owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty'."[66]

90. Regarding the kind of acts mentioned in the first part of the above quotation, Bourquin is virtually in agreement with Gidel. Bourquin says:

> "What acts under municipal law can be cited as expressing its desire to act as the sovereign? That is a matter very difficult, if not impossible, to determine *a priori*. There are some acts which are manifestly not open to any misunderstanding in this regard. The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign."[67]

He is more doubtful or flexible with respect to the measures of assistance to navigation mentioned in the second part of Gidel's statement.

> "There are, however, some borderline cases. Thus, the placing of lights or beacons may sometimes appear to be an act of sovereignty, while is other circumstances it may have no such significance."[68]

91. Bustamante, in a draft convention prepared by him with a view to assisting the 1930 Hague Codification Conference, included an article relevant to the question now discussed. It reads as follows:

> "There are expected from the provisions of the two foregoing articles, in regard to limits and distance, those bays or estuaries called historic, viz., those over which the coastal State or States, or their constituents, have traditionally exercised and maintained their sovereign ownership, either by provisions of internal legislation and jurisdiction, or by deeds or writs of the authorities."[69]

92. Substantially the same article was included in the "project" submitted in 1933 to the Seventh International Conference of American States by the American Institute of International Law.[70]

93. In the *Fisheries* case, Norway stated in its Counter-Memorial:

> "It cannot seriously be questioned that, in the application of the theory of historic waters, acts under municipal law on the part of the coastal State are of the essence. Such acts are implicit in an historic title. It is the exercise of sovereignty that lies at the basis of the title. It is the peaceful and continuous exercise thereof over a prolonged period that assumes an international significance and becomes one of the elements of the international juridical order."[71]

And having asked how sovereignty is asserted, the Counter-Memorial replies:

> "Above all, by action under municipal law (laws, regulations, administrative measures, judicial decisions, etc.)."[72]

94. The United Kingdom Government, while emphasizing that they were not in itself sufficient to establish the title, agreed that such acts by the State under municipal law (*actes d'ordre interne*) were essential to the establishment of an historic title to a maritime territory.[73]

95. These examples furnish some guidance as to the kind of acts which are required. In the first place

[65] Cf. Johnson, op. cit., pages 344-345 regarding the exercise of authority necessary as a basis for acquisitive prescription.

[66] Gidel, op. cit., page 633.

[67] Bourquin, op. cit., page 43.

[68] *Ibid.* See also the statements emanating from the Ministry of Foreign Affairs of the Netherlands in 1848 and quoted by Gidel, op. cit., page 633, footnote 3.

[69] Bustamante, *The Territorial Sea* (1930), page 142.

[70] See the Secretariat memorandum on "historic bays" (A/CONF.13/1), page 14.

[71] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. I, pages 567-568.

[72] *Ibid.*, page 568.

[73] Op. cit., vol. II, page 648. See also the Secretariat memorandum on "historic bays" (A/CONF.13/1), page 32.

the acts must emanate from the State or its organs. Acts of private individuals would not be sufficient —unless, in exceptional circumstances, they might be considered as ultimately expressing the authority of the State. As Sir Arnold McNair said in his dissenting opinion in the *Fisheries* case:

> "Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdiction, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them."[74]

96. Furthermore, the acts must be public; they must be acts by which the State openly manifests its will to exercise authority over the territory. The acts must have the notoriety which is normal for acts of State. Secret acts could not form the basis of a historic title; the other State must have at least the opportunity of knowing what is going on.[75]

97. Another important requirement is that the acts must be such as to ensure that the exercise of authority is effective.

(c) *Effectiveness of authority exercised*

98. On this point there is full agreement in theory and practice. Bourquin expresses the general opinion in these words:

> "Sovereignty must be effectively exercised; the intent of the State must be expressed by deeds and not merely by proclamations."[76]

99. This does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken.

100. The first requirement to be fulfilled in order to establish a basis for a title to "historic waters" can therefore be described as the effective exercise of sovereignty over the area by appropriate action on the part of the claiming State. We can now proceed to the second requirement, namely, that this exercise of sovereignty continued for a time sufficient to confer upon it the quality of usage.

2. *Continuity of the exercise of authority: usage*

101. A study of the extensive material included in the Secretariat memorandum on "historic bays" (A/CONF.13/1) and drawn from State practice, arbitral and judicial cases, codification projects and opinions of learned authors, provides ample proof of the dominant view that usage is required for the establishment of title to "historic waters". This view seems natural and logical considering that the title to the area is an *historic* title.[77] A great variety of terms is used in describing and qualifying the usage required. A few of the terms employed in the codification projects mentioned in the memorandum[78] may illustrate this variety: "continuous usage of long standing" [*usage continu et séculaire*] (Institute of International Law 1894), "international usage" (Institute of International Law 1928), "established usage" (Harvard draft 1930), "continued and well-established usage" (American Institute of International Law 1925), "established usage generally recognized by the nations" (International Law Association 1926), "immemorial usage" (Japanese International Law Society 1926), "continuous and immemorial usage" (Schücking draft 1926).

102. The term "usage" is not wholly unambiguous. On the one hand it can mean a generalized pattern of behaviour, i.e., the fact that many persons behave in the same (or a similar) way. On the other hand it can mean the repetition by the same person of the same (or a similar) activity. It is important to distinguish between these two meanings or "usage", for while usage in the former sense may form the basis of a general rule of customary law, only usage in the latter sense can give rise to a historic title.

103. As was established above, a historic title to a maritime area must be based on the effective exercise of sovereignty over the area by the particular State claiming it. The activity from which the required usage must emerge is consequently a repeated or continued activity of this same State. The passage of time is therefore essential; the State must have kept up its exercise of sovereignty over the area for a considerable time.

104. On the other hand, no precise length of time can be indicated as necessary to build the usage on which the historic title must be based. It must remain a matter of judgement when sufficient time has elapsed for the usage to emerge. The addition of the adjective "immemorial" is of little assistance in this respect. Taken literally "immemorial" would be a wholly impractical notion;[79] the term "immemorial" could, therefore, at the utmost be understood as emphasizing, in a vague manner, the time-element contained in the concept of "usage". It will anyhow be a question of evaluation whether, considering the circumstances of the particular case, time has given rise to a usage.

105. Usage, in terms of a continued and effective exercise of sovereignty over the area by the State claiming it, is then a necessary requirement for the establishment of a historic title to the area by that State. But is usage in this sense also sufficient? There seems to be practically general agreement that besides this national usage, consideration must also be given to the international reaction to the said exercise of sovereignty. It is sometimes said that the national usage has to develop into an "international usage". This may be a way of underlining the importance of the attitude of foreign States in the creation of an historic title; in any case, a full understanding of the matter requires an analysis of the question how and to

[74] *I.C.J. Reports, 1951*, page 184. Cf. *Pleadings*, vol. II, page 657.

[75] The question of knowledge on the part of foreign States is further discussed below in paragraph 125 *et seq.*

[76] Op. cit., page 43.

[77] Regarding the opinion which pays less attention to the passage of time and lays more emphasis on the vital interests of the State claiming the area, see below paragraphs 134 *et seq.*

[78] Pages 14-15.

[79] Cf. Johnson, op. cit., page 339.

what extent the reaction of foreign States influences the growth of such a title.

3. *Attitude of foreign States*

106. In essence, this is the problem of the so-called acquiescence of foreign States. As was indicated above, according to a widely held opinion acquiescence in the exercise of sovereignty by the coastal State over the area claimed is necessary for the emergence of an historic title to the area. The connexion between this requirement of acquiescence and the opinion that "historic waters" are an exception to the general rules of international law governing the delimitation of maritime areas was also pointed out above. It might be recalled that the argument was on the following lines. The State which claims "historic waters" in effect claims a maritime area which according to general international law belongs to the high seas. As the high seas are *res communis omnium* and not *res nullius*, title to the area cannot be obtained by occupation. The acquisition by historic title is "adverse acquisition", akin to acquisition by prescription, in other words, title to "historic waters" is obtained by a process through which the originally lawful owners, the community of States, are replaced by the coastal State. Title to "historic waters", therefore, has its origin in an illegal situation which was subsequently validated. This validation could not take place by the mere passage of time; it must be consummated by the acquiescence of the rightful owners.

107. The argument seems logically to imply that acquiescence is a form of consent. However, here a difficulty arises. If acquiescence is a form of consent, acquiescence would amount to *recognition* of the sovereignty of the coastal State over the area in question and reliance on a historic title would be superfluous. If the continued exercise of sovereignty during a length of time had to be validated by acquiescence in the meaning of consent by the foreign States concerned, the lapse of time, i.e., the historical element, would be immaterial.

108. Some of the defenders of the concept of acquiescence, on the one hand, desiring to avoid a confusion with recognition and, on the other hand, unwilling to concede that the continued exercise of sovereignty by the coastal State over the area claimed could in itself constitute a historic title to the area, have endeavoured to vindicate the idea of acquiescence by interpreting it as an essentially negative concept. The term "acquiescence" is said to "describe the inaction of a State which is faced with a situation constituting a threat to or infringement of its rights",[80] or to mean that the foreign States "have simply been inactive".[81] The historic title would then be based on the continued effective exercise of sovereignty by the coastal States over the area in question combined with the inaction of the other States. In this view,

> "the true role of the theory [of historic rights] is to compensate for the lack of any evidence of express or active consent by States, by creating a presumption of acquiescence arising from the facts of the case and from the inaction and toleration of States."[82]

[80] McGibbon, "The Scope of Acquiescence in International Law", in *British Year Book of International Law*, vol. 31 (1954), page 143.

[81] Fitzmaurice in *British Year Book of International Law*, vol. 30 (1953), page 29.

[82] Fitzmaurice, *ibid.*, page 30.

109. It is interesting to note that the protagonists of the concept of acquiescence, if they reduce this concept to mean merely inaction or toleration, arrive at a position which is very near to the one taken by those who oppose the idea that the régime of "historic waters" is an exceptional régime and the consequent idea that the acquiescence of foreign States is necessary to acquire a title to historic waters. Bourquin, who as was seen above, is a spokesman for the latter opinion, states the following:

> "While it is wrong to say that the acquiescence of these States is required, it is true that if their reactions interfere with the peaceful and continuous exercise of sovereignty, no historic title can be formed.
>
> "In such cases the question to be asked is not whether the other States consented to the claims of the coastal State but whether they interfered with the action of that State to the point of divesting it of the two conditions required for the formation of an historic title.
>
> "Obviously only acts of opposition can have that effect. So long as the behaviour of the riparian State causes no protest abroad, the exercise of sovereignty continues unimpeded . . .
>
> "The absence of any reaction by foreign States is sufficient."[83]

110. The similarity of the final positions arrived at, both by some of the proponents and some of the opponents of the notion of acquiescence is striking: both seem to agree that inaction on the part of foreign States is sufficient to permit the emergence of a historic right. This would seem to suggest that the term "acquiescence" is ambiguous. In these circumstances, it might perhaps be better, in the interest of clarity, not to use the term "acquiescence" in this context. The term seems at least *prima facie* to convey the idea of consent and its use can therefore result in the conclusion that a historic title can arise only if concurrence on the part of foreign States has been demonstrated in a positive way. If the proponents of the necessity of acquiescence really have in mind only the negative aspect, i.e., toleration on the part of the foreign States, it would be preferable to use the term "toleration" which better expresses their thoughts. Moreover, there should be no difficulty in dropping the term "acquiescence" once the dubious theory that title to "historic waters" constitutes an exception to general international law has been discarded.

111. "Toleration" is furthermore the expression used by the International Court of Justice in the *Fisheries* case when discussing Norway's historic title to the system of delimitation which was an issue in the dispute. The Court said, *inter alia*:

> "In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose. From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States . . .

[83] Bourquin, op. cit., page 46. Bustamante is also against the idea of consent, see op. cit., page 100.

> "The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact."[84]

The Court continued further on in its judgement:

> "The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.
>
> "The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."[85]

In the Court's opinion, the consistent and prolonged application of the Norwegian system combined with the general toleration of foreign States gave rise to a historic right to apply the system. This opinion seems to correspond fairly well to the final positions taken both by the proponents and the opponents of the concept of "acquiescence", as set out in paragraphs 108 and 109.

112. However, even if it may be said that, whether the term "acquiescence" or the term "toleration" is used, there is substantial agreement that inaction on the part of foreign States is sufficient to permit an historic title to a maritime area to arise by effective and continued exercise of sovereignty over it by the coastal State during a considerable time, all difficulties in this respect are not solved. It is true, of course, that if there has been no reaction at any time from any foreign State, then there is no difficulty. But what happens if at any one time or another opposition from one or more foreign States occurred? Does any kind of opposition by any one State at any time preclude the historic title? It is *prima facie* highly improbable that the terms "inaction" or "toleration" would have to be interpreted so strictly. Before attempting a more precise answer, it would, however, be useful to examine more closely the three points which seem to be involved, namely, (i) what kind of opposition would prevent the historic title from emerging, (ii) how widespread in terms of the number of opposing States must the opposition be, and (iii) when must the opposition occur.

113. With regard to the first point, it is obvious that the opposition ending the inaction must be expressed in some kind of action. In the passage quoted above in paragraph 109, Bourquin states that:

> ". . . if their reactions [i.e., of foreign States] prevent the peaceful and continuous exercise of sovereignty, no historic title can be formed."[86]

Indeed, it is hardly doubtful that opposition by force on the part of foreign States would be a means of interrupting the process by which a historic title is formed. On the other hand it cannot be assumed that Bourquin, despite the use of the word *paisible*, would consider only opposition by force as effectively preventing the creation of a historic title. He also says in the passage quoted above that:

> ". . . so long as the behaviour of the riparian State causes no protest abroad, the exercise of sovereignty continues unimpeded."[87]

This seems to imply also a protest could be a means of hindering the emergence of a historic right.

114. If that is so, Bourquin's view would not be far from the opinion expressed by Fitzmaurice in these words:

> "Protest, in some shape or form or equivalent action, is necessary in order to stop the acquisition of a prescriptive right."[88]

In a footnote Fitzmaurice goes on to describe the action in question as follows:

> "Apart from the ordinary case of a diplomatic protest, or a proposal for reference to adjudication, the same effect could be achieved by a public statement denying the prescribing country's right, by resistance to the *enforcement* of the claim, or by counter-action of some kind."[89]

115. These are some of the acts by which the opposition of foreign States could be expressed, and there are, no doubt, other means which could be used. More important than establishing a list of acts, is to emphasize that whatever the acts they must effectively express a sustained opposition to the exercise of sovereignty by the coastal State over the area in question. To quote Fitzmaurice again:

> "Moreover the protest must be an effective one depending on what the circumstances require. A simple protest may suffice to begin with, but this may not be enough as time goes on."[90]

Should despite the protest the coastal State continue to exercise its sovereignty over the area, the opposition on the part of the foreign State must be maintained by renewed protests or some equivalent action.

116. The second point to be examined is how wide the opposition must be, to prevent the creation of a historic title. Is it sufficient that a single State effectively expresses its opposition? Hardly anybody would go as far as that. Gidel says on this point:

> "A single objection formulated by a single State will not invalidate the usage; furthermore all objections cannot be placed on an equal footing, regardless of their nature, the geographical or other situation of the objecting State."[91]

Bourquin[92] agrees with Gidel that one opposing State would not be sufficient to invalidate the usage. This seems, moreover, to be a generally accepted opinion. If the total absence of opposition is not a necessary requirement for the emergence of a historic right, it would seem to be a matter of judgement, subject to the circumstances in the particular case, how widespread the opposition must be to prevent the historic title from materializing.

117. In this connexion it is interesting to note, in the above quotation, that Gidel is not willing to place all the opposing States on the same level. The opposition of one State may according to circumstances carry more weight than the opposition of another State.

[84] Fisheries case, Judgement of 18 December 1951, *I.C.J. Reports, 1951*, page 138.

[85] *Ibid.*, page 139.

[86] Bourquin, op. cit., page 46.

[87] *Ibid.*

[88] *British Year Book of International Law*, vol. 30 (1953), page 42. A historic right to a maritime area is in Fitzmaurice's opinion a prescriptive right, see op. cit., pages 27-28.

[89] Op. cit., page 42, footnote 1.

[90] Op. cit., page 42, see also pages 28-29.

[91] Gidel, op. cit., page 634.

[92] Bourquin, op. cit., pages 47-48.

Fitzmaurice follows the same line of reasoning when he says:

> "It is obvious that, depending on the circumstances, the acquiescence of certain States must be of far greater weight and moment in establishing the existence of a prescriptive or historic right than that of others. Thus the consent, either expressly given or reasonably to be inferred, of those States which, whether on account of geographical proximity, or commercial or other interest in the subject-matter, etc., are directly affected by the claim, may be almost enough in itself to legitimize it; while a clear absence of consent on the part of such States would certainly suffice to prevent the establishment of the right. Equally, acquiescence or refusal on the part of States whose interest in the matter, actual or potential, is non-existent, or only slight, may have little practical significance."[93]

118. The position, outlined in the passages quoted from Gidel and Fitzmaurice, that the same weight need not be accorded to the attitude of each State, seems to be reasonable and realistic. It may, perhaps, be pointed out, however, that this position is hardly consonant with the assumption that the right to "historic waters" is an exception to the general rules of international law. If that assumption were correct, if the State claiming "historic waters" were really claiming a part of the high seas, a part of a *res communis*, unless a historic title could be established, it would seem that any State, any member of the community of States, should be able to prevent by its opposition the emergence of the historic title. How could in such case some States be entitled to give away rights which belong to all States and how could in the matter of acquiescence or opposition greater weight be given to one State than to the other? On the other hand, if it is admitted that the legal situation regarding the delimitation of the maritime territory of States is not clear, that the customary international law in this respect is in doubt, and that it is against that background that the existence or non-existence of historic rights to particular areas has to be considered, then the view seems sensible and practical that this question of opposition is a question of appreciation, not a question of arithmetic, and that the opposition of one State in view of the circumstances in the particular case may well be of greater importance than that of another State.

119. In this connexion, it may be useful to try to visualize how a dispute with respect to "historic waters" is most likely to arise. Although it is theoretically possible, it is not probable that a dispute will arise because all or most foreign States refuse to recognize the historic right of a coastal State to a certain maritime area. Many States may have no great interest in the question and would therefore have no reason to go out of their way to antagonize the coastal State. The dispute would be most likely to arise through the opposition of neighbouring States or of those States which have a particular interest in the area. It would therefore be only natural if the arbitrator or tribunal having to settle the dispute paid particular attention to the previous attitute of those States and, in determining the existence of an historic title, gave special weight to the fact that these States, in the formative period of the disputed title, had or had not effectively opposed the exercise of sovereignty by the coastal State over the area in question.

120. With regard to point two, relative to the question how wide-spread the opposition must be to preclude the emergence of an historic title, it may therefore be said that this is a matter of appreciation in the light of the circumstances in each case. How this appreciation may be made, can be illustrated by the last part of the statement of the International Court of Justice in the *Fisheries* case, referred to above in paragraph 111:

> "The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."[94]

121. It remains to deal with the third point, namely, the question at what time the opposition must occur in order to prevent the creation of an historic title. It is evident that the opposition must have been effectively expressed before the historic title came into being. After a State has exercised sovereignty over a maritime area during a considerable time under general toleration by the foreign States, and an historic right to the area has thus emerged, it is not possible for one or more States to reverse the process by coming forward with a protest against the accomplished fact. The historic title is already in existence and stands despite the belated opposition.

122. However, by this general and rather obvious statement the problem is not solved. There are in any case two questions which need to be discussed in this connexion. The first question is: how long is the considerable time during which sovereignty has to be exercised and tolerated? The second question is: from what moment does this time start to run?

123. Regarding the first question it can only be said that the length of time necessary for a historic right to emerge is a matter of judgement; no precise time can be indicated. However, as the exercise of sovereignty has to develop into a usage the length of time must be considerable. Reference may be made in that respect to the explanations given above in paragraphs 101-104.

124. The second question has several aspects. In the first place the time cannot begin to run until the exercise of sovereignty has begun. As was said above, the exercise of sovereignty must be effective and public and the time can therefore not begin to run until these two conditions have been fulfilled.

125. Here a problem arises: is it sufficient that the exercise of sovereignty is public or is it also necessary that the foreign States actually have knowledge of this exercise of sovereignty? In other words, can a foreign State offer as a valid excuse for its inaction, the fact that it had no actual knowledge of the situation, and demand that the time within which it must manifest its opposition should be construed to run only from the moment it received such knowledge?

126. Those who consider the right to "historic waters" to be an exception to general international law and therefore have a tendency to require at least tacit or presumed consent on the part of foreign States, are also inclined to require knowledge of the situation by these States, in order that absence of opposition may be held against them. For instance Fitzmaurice states:

> "Clearly, absence of opposition is relevant only in so far as it implies consent, acquiescence or toleration on the part of the States concerned; but absence of opposition *per se* will not necessarily or always imply this. It depends on whether the circumstances are such that opposition is called for because the absence of it will cause consent or acquiescence to be presumed. The circumstances are not invariably of this character, particularly for instance where the practice or usage concerned has not been brought to the knowledge of other States, or at all events lacks the notoriety from which such knowledge might be presumed: or again, if the practice or usage concerned takes a form such that it is not reasonably possible for other States to infer what its true character is."[95]

127. The preference is evident in the quotation for a system according to which consent or acquiescence on the part of foreign States is required and consequently also their knowledge of the situation. On the other hand, the language used seems to indicate that also implied consent and presumed knowledge would be sufficient. The requirement of knowledge and consent seems to be more theoretical than real; in the end the author seems to be satisfied with notoriety from which knowledge may be presumed.

128. In any case, nobody seems to demand that the coastal State must formally notify each and all of the foreign States that it has assumed sovereignty over the area, before the time necessary to establish a usage will begin to run. If that is so, the notoriety of the situation: the public exercise of sovereignty over the area, would in reality be sufficient. It may, moreover, be recalled that in the *Fisheries* case, the International Court of Justice referred to

> "the notoriety essential to provide the basis of an historic title."[96]

129. Against this opinion that notoriety is sufficient, the objection has been made that its effect would be to place an excessive burden of vigilance on States, as they would be forced to follow the activities of the legislative and executive organs of other States more closely than is usually the case.[97] It is, however, doubtful if this objection is justified. It may be argued that if a State had a real interest in a maritime area it would be natural for that State to follow closely what was going on there, and that the fact that the State was unaware of the situation was a good indication that its interest in the area was slight or non-existent. It might happen that at a later stage the State developed an interest in the area and so became aware of the circumstance that the coastal State for a long time had exercised sovereignty over it. If the newcomer State now found that this was against its interests, is it really a justifiable view to assert that this State could validly object to the coastal State's claim to an historic title to the area on the ground that it did not know until recently what was going on in the area?

130. In conclusion therefore, there seem to be strong reasons for holding that notoriety of the exercise of sovereignty, in other words, open and public exercise of sovereignty, is required rather than actual knowledge by the foreign States of the activities of the coastal States in the area.

131. Assuming now that the time necessary for the formation of a historic title has begun to run, sufficient opposition to block the title may not be forthcoming immediately. One or two States may protest, but still the over-all situation may be one of general toleration on the part of the foreign States. Opposition may build up successively and finally reach a stage where it no longer can be said that the exercise of sovereignty of the coastal State over the area is generally tolerated. Thereby the emergence of the historic title will be prevented, provided that this stage is not reached too late, i.e., at a time when the title has already come into existence because sufficient time under the condition of general toleration has already elapsed. There would therefore be a kind of race taking place between the lapse of time and the building up of the opposition. The outcome of the race is necessarily a matter of judgement as there are no precise criteria to be applied to either of the two competing factors. There is no precise time limit for the lapse of time necessary to allow the emergence of the historic right, and there is no precise measure for the amount of opposition which is necessary to exclude "general toleration".

132. This concludes the discussion of the three factors which according to the dominant opinion have to be taken into consideration in determining whether a right to "historic waters" has arisen. The result of the discussion would seem to be that for such a title to emerge, the coastal State must have effectively exercised sovereignty over the area continuously during a time sufficient to create a usage and have done so under the general toleration of the community of States.

133. It remains to study the fourth factor which is sometimes referred to, namely, the question of the vital interests of the coastal State in the area.

4. *Question of the vital interests of the coastal State in the area claimed*

134. The Secretariat memorandum on "historic bays" (A/CONF.13/1), paragraphs 151 *et seq.*, describes a view taken by some authors and Governments, according to which a right to "historic bays" may be based not only on long usage, but also on other "particular circumstances" such as geographical configuration, requirements of self-defence or other vital interests of the coastal State. The origin of this idea is usually ascribed to Dr. Drago's dissenting opinion in the North Atlantic Coast Fisheries Arbitration (1910) where he stated that:

> "a certain class of bays, which might be properly called the historical bays, such as Chesapeake Bay and Delaware Bay in North America and the great estuary of the River Plate in South America, form a class distinct and apart and undoubtedly belong to the littoral country, whatever be their depth of penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular circumstances such as geographical configuration, immemorial usage and above all, the

[93] Fitzmaurice, op. cit., pages 31-32.

[94] *I.C.J. Reports, 1951*, page 139.

[95] *British Year Book of International Law*, vol. 30 (1935), page 33.

[96] *I.C.J. Reports, 1951*, page 139.

[97] Cf. *British Year Book of International Law*, vol. 30 (1953), page 42.

requirements of self-defence, justify such a pretention."[98]

The basis for Dr. Drago's statement is evidently that in the classical cases of "historic bays" such as Chesapeake Bay and Delaware Bay, such "particular circumstances" were put forward in justification of the claims.

135. The significance of this line of thought is not so much that usage may have to be fortified by other reasons such as geographical configuration or vital interest in order to form a firm basis for a claim to "historic bays". It is rather that these other "particular circumstances" may justify the claim without the necessity of establishing also "immemorial usage". This is in any case the direction in which the idea developed, as may clearly be seen from the information given in the Secretariat memorandum.

136. Illuminating in this respect is article 7 of the draft international convention submitted at the Buenos Aires Conference of the International Law Association in 1922 by Captain Storny, reading as follows:

"A State may include within the limits of its territorial sea the estuaries, gulfs, bays or parts of the adjacent sea in which it has established its jurisdiction by continuous and immemorial usage or which, when these precedents do not exist, are unavoidably necessary according to the conception of article 2; that is to say, for the requirements of self-defence or neutrality or for ensuring the various navigation and coastal maritime police services."[99]

137. Also important is the statement of the Portuguese representative at the 1930 Hague Codification Conference:

"Moreover, if certain States have essential needs, I consider that those needs are as worthy of respect as usage itself, or even more so. Needs are imposed by modern social conditions, and if we respect agelong and immemorial usage which is the outcome of needs experienced by States in long past times, why should we not respect the needs which modern life, with all its improvements and its demands, imposes upon States."[100]

138. There is undoubtedly some justification for this view, and it is also understandable that it appeals to States which reached independence rather late and therefore are not able to base their claims on long usage.[101]

139. On the other hand it hardly seems appropriate to deal with the problem of these vital needs in the context of "historic bays". Bourquin, who otherwise appreciates the importance of the vital interests of the State with regard to bays, says in this respect:

"But why should this factor be considered strictly within the context of 'historic titles'? However widely the concept of a 'historic title' is construed, surely it cannot be claimed in circumstances where the historic element is wholly absent. The 'historic title' is one thing; the 'vital interest' is another."[102]

It is difficult to disagree with that opinion.

140. Attention may also be drawn to another aspect of the matter, which seems worth considering. In a convention on the territorial sea, it makes good sense to reserve the position of "historic bays". On the contrary, giving the parties the right to claim "vital bays" would come near to destroying the usefulness of any provision in the convention regarding the definition or delimitation of bays.

5. Question of "historic waters" the coasts of which belong to two or more States

141. In the foregoing discussion, it has been assumed that there was only one riparian State bordering the area in question and that therefore one State alone was interested in claiming it. What is the situation if there are two or more States bordering the area? Will that circumstance materially change the requirements discussed above for the emergence of an historic title to the area? Without pretending to deal with the matter exhaustively, a few considerations may be offered with respect to this problem.[103]

142. These questions may be discussed in regard to two different geographical settings both of which are in some way related to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

143. Article 12 of the Convention deals with the situation where the coasts of two States are opposite or adjacent to each other, and paragraph 1 of the article provides as follows:

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision."[104]

144. It does not seem that in this case the fact that there is more than one coastal State would materially change the requirements for the establishment of an historic title. There is no doubt that an historic title can arise in that situation; at least this is assumed by the wording of the article. In other words, the emergence of an historic title for one of the coastal States is not prevented by the mere existence of another coastal State. On the other hand, in evaluating the attitude of the foreign States regarding the claim to an historic title,[105] it would seem reasonable to pay special attention to the attitude of the other coastal States.

145. The second geographical situation of relevance is the case of a bay bordered by two or more States.[106] This situation is related to the above-mentioned Geneva Convention in a negative way, as its article on bays (article 7) deals only with bays the coasts of which

[98] See quotation in A/CONF.13/1, paragraph 92.
[99] *Ibid.*, paragraph 132.
[100] *Ibid.*, paragraph 155.
[101] See the statement by Mr. García-Amador in the International Law Commission and referred to in the footnote to paragraph 7 above.
[102] Bourquin, op. cit., page 521 quoted and translated in A/CONF.13/1, paragraph 158.

[103] The question is also dealt with in the Secretariat memorandum on "historic bays" A/CONF.13/1, paras. 44-47 and 131-136.
[104] *United Nations Conference on the Law of the Sea, Official Records*, vol. II, page 133.
[105] Cf. above paragraphs 117-119.
[106] Cf. Gidel, op. cit., pages 626-627.

belong to a single State. The reason for this limitation on the scope of the article was that the International Law Commission, which prepared the text forming the basis of the Convention, considered that it did not have enough information regarding bays surrounded by two or more States to include provisions regarding them. The question of such bays was therefore left open as far as the Convention is concerned, and it would, indeed, seem to be a problem which could be discussed in depth only after additional information on the matter has been received from Governments. The few remarks which are made below in this paper are therefore of a very preliminary character.

146. Historic claims to a bay bordered by two or more States might be envisaged in two different circumstances. The claim may be made jointly by all the bordering States or it may be presented by one or more, but not all of these States.

147. If all the bordering States act jointly to claim historic title to a bay, it would seem that in principle what has been said above regarding a claim to historic title by a single State would apply to this group of States. One problem which might be raised in this connexion, without any attempt being made to solve it, is whether sovereignty over the bay must during the required period have been exercised by all the States claiming title or whether it is sufficient that during that period one or more of them exercised sovereignty over the bay.

148. The second hypothesis in which a claim to a bay bordered by two or more States might be envisaged arises where only one or several of them jointly, but not all of them, claim the area. In this case, it is rather improbable that a historic title to the bay could ever arise in favour of the claiming State or States. For it must be expected that an attempt to exercise sovereignty over the bay on the part of one or some of the riparian States would cause immediate and strong opposition on the part of the other riparian State or States. It would therefore be difficult to imagine that the requirement of toleration by foreign States could in these circumstances be fulfilled. It must be emphasized in this connexion that, when it was said above that the opposition of one or two foreign States would not necessarily exclude the existence of a general toleration on the part of foreign States, this statement referred to waters bordered by a single coastal State. In the case of a bay surrounded by several States, the persistent opposition by one or more of the riparian States to the exercise of sovereignty over the bay by one or more of the other riparian States must naturally be of great if not decisive importance in evaluating whether or not the requirement of toleration had been fulfilled.

D. Burden of proof

149. As the existence of a right to "historic waters" is to such a large extent a matter of judgement, the question of proof and in particular the problem of the burden of proof would seem to be of a rather secondary interest. The task of the parties to a dispute seems to be less to establish certain facts than to persuade the judges to follow their respective opinions regarding the evaluation of the facts. Still the question of the burden of proof cannot be ignored, in particular since it is one of the problems usually raised in connexion with the right to "historic waters".

150. In the memorandum of the Secretariat on "historic bays" (A/CONF.13/1), paragraphs 164-166, attention was drawn to certain significant statements in doctrine and practice regarding the onus of proof with respect to "historic waters". Gidel is quoted as follows:

"The onus of proof rests on the State which claims that certain maritime areas close to its coast possess the character of internal waters which they would not normally possess. The coastal State is the petitioner in this sort of action. Its claims constitute an encroachment on the high seas; and it would be inconsistent with the principle of the freedom of the high seas, which remains the essential basis of the whole public international law of the seas, to shift the onus of proof onto the States prejudiced by that reduction of the high seas which is the consequence of the appropriation of certain waters by the claimant State."[107]

151. Reference is also made to Basis of Discussion No. 8 submitted to the 1930 Hague Codification Conference and reading:

"The belt of territorial waters shall be measured from a straight line drawn across the entrance of a bay, whatever its breadth may be, if by usage the bay is subject to the exclusive authority of the coastal State; the onus of providing such usage is upon the coastal State."[108]

152. Finally it is pointed out that in the *Fisheries* case, the United Kingdom and Norway agreed that the onus of proof was on the State claiming a historic title, although they disagreed regarding the conditions and nature of the proof.

It may be interesting to quote the parties themselves in that respect. The Norwegian Government stated in its Counter-Memorial under the title "the proof of an historic title":

"The usage must be proved by the State which invokes it. Regarding this principle the Norwegian Government agrees with the United Kingdom Government. But it does not agree with it regarding the conditions of proof to be met and especially regarding the nature of the elements of proof to be produced."[109]

The United Kingdom Government said:

"The Norwegian Government ... while disputing the contentions of the United Kingdom Government in regard to the conditions and nature of the proof of an historic title, agrees that the burden of proof lies upon the State which invokes the historic title. This admission that the burden of proof lies upon the claimant State was only to be expected in view of the abundant authority to that effect. The role of the historic element being to validate what is an exception to general rules and therefore intrinsically invalid, it is natural that the burden of proof should so emphatically be placed upon the coastal State. ..."[110]

153. There is doubt that there is abundant authority for the view that the burden of proof lies upon the

[107] Gidel, op. cit., page 602.
[108] *Acts of the Conference for the Codification of International Law*, vol. III: Minutes of the Second Committee, page 179; also cited in the aforesaid memorandum by the Secretariat (A/CONF.13/1), para. 87.
[109] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. I, page 566.
[110] Op. cit., vol. II, pages 685-646.

claimant State. Some who hold that view are mainly influenced, as is evident from the statements of Gidel and of the United Kingdom, by their belief that the historic title is an exception to the general rules of international law and that "historic waters" is an encroachment on the freedom of the high seas. The difficulties involved in this line of reasoning have been referred to above and may be borne in mind also with respect to the question of the burden of proof. Others who say that the burden of proof lies upon the claimant may do so merely because it seems to restate a widely accepted procedural rule. It can, however, be doubted that the rule that the State claiming historic title has the burden of proof is equal to the procedural rule that the claimant must prove his case. The meaning of the former rule is evidently that the burden of proof lies on the State claiming the title whether that State is the claimant or the defendant in a dispute.

154. Moreover, the statement that the burden of proof is on the State claiming the historic title does not have a very precise meaning. It is significant in that respect that it could be accepted by both parties in the *Fisheries* case although they disagreed sharply as to what had to be proved and how. For the purpose of a useful discussion of the question, it is necessary to relate the burden of proof to the various factors which must be present to create an historic title to a maritime area.

155. As was pointed out above, the first requirement for the development of an historic right to a maritime area is the effective exercise of sovereignty over the area by the State claiming the right. There seems to be no doubt that the State claiming the area has to show that it has exercised the required sovereignty. To do that it would have to prove certain facts such as for instance that in certain instances it enforced its laws and regulations in or with respect to the area. These facts the State must prove to the satisfaction of the arbitrator (or Court or whoever has to decide whether the title exists or not). The opposing State (or States) might perhaps allege other facts intended to show that the required exercise of sovereignty did not take place, and the latter State must then show these facts to the satisfaction of the arbitrator. Each of the opponents therefore bears the burden of proof with respect to the facts on which they rely. On the basis of the facts which he considers to be proved, the arbitrator then decides whether it has been demonstrated that the required sovereignty was exercised. Obviously, this involves an evaluation not only of the evidence presented regarding the facts but also of the importance of these facts as signs of the alleged exercise of sovereignty. If the arbitrator finds that effective sovereignty has not been exercised, the State claiming the historic title loses this necessary basis for its claim. In that sense the burden of proof with respect to the exercise of sovereignty is undoubtedly on the State claiming the title.

156. In order to give rise to an historic title, the exercise of sovereignty, as was seen above, must not only be effective but also prolonged, continued. It must develop into a national usage. To persuade the arbitrator that this is the case, the State claiming title would again bring forward certain facts such as the fact that the enforcement of its laws and regulations had gone on for a number of years. These facts the State would have to prove. The opposing State (or States) might again allege other facts which in its opinion indicated that the claiming State had not been able to maintain its authority over the area uninterruptedly and that therefore, no prolonged, continued exercise of sovereignty had taken place. The opposing State would have to prove the facts on which its contentions were based. The arbitrator would then again have to evaluate the facts which he considers as established in order to decide whether or not an effective exercise of sovereignty by the State claiming title had taken place continuously during a sufficient period for a usage to have developed. If he finds that this was not the case, the State claiming title would have lost a necessary basis for its claim and in that sense it therefore carries the burden of proof regarding this point.

157. The third factor to take into consideration in relation to the emergence of an historic title is the attitude of the foreign States. The problem of the burden of proof is slightly more complicated with respect to this factor, because of the two views opposing each other in this respect: one, that "acquiescence" in the meaning of tacit or presumed consent by the foreign States is required for the emergence of the historic title, and the other, that "general toleration" on the part of these States is sufficient. The general pattern of proof will, however, be the same as in regard to the previous factors. Whether the State claiming the title endeavours to prove "acquiescence" or "toleration", it will assert certain facts in support of its contention that "acquiescence" (or "toleration") existed, and these facts the State would have to prove to the satisfaction of the arbitrator. And similarly the opponent (or opponents) would bring forward certain facts in support of his assertion that "acquiescence" (or "toleration") did not exist; for these facts, the opponent would have the burden of proof. The facts upon which the claiming State and the opposing State (or States) rely may not be the same, if they attempt to prove (or disprove) "acquiescence" as if they attempt to prove (or disprove) "toleration", but in either case they have the burden of proof for the facts which they allege. Whether "acquiescence" or "toleration" is required is not a question of fact but a question of law, and each of the parties will no doubt try to persuade the arbitrator that its view in this respect is correct, but this is not a question of evidence. Finally the arbitrator will decide whether "acquiescence" or "toleration" is the necessary requirement and on the basis of the facts he will also decide whether the requirement of "acquiescence" (or "toleration") was fulfilled. If he comes to the conclusion that this was not the case, the State claiming title loses an indispensable basis for its claim of title, and in that sense it bears the burden of proof.

158. In summarizing this discussion of the problem of the burden of proof, it may be said that the general statement that the burden of proof is on the State claiming historic title to a maritime area is not of much value. If the statement means that, should the arbitrator (or whoever has to decide) not find that all the elements of the title (all the requirements for the existence of the title) are present, the State claiming the title will lose, then the statement simply asserts the obvious. The elements of the title have evidently to be proved to the satisfaction of the arbitrator, otherwise he will not accept the title. And this holds true whether or not the title is considered to be an exception to the general rules of international law, so that burden of proof is not *really* a logical consequence of the allegedly exceptional character of the title. In a dispute, each

party has to prove the facts on which he relies, otherwise the arbitrator will not take these alleged facts into account. Furthermore, as regards the interpretation of the law and the evaluation of the facts in the light of this interpretation, each party will naturally try to persuade the arbitrator to adopt the party's views in this respect; to the extent that the party does not succeed in this, it will obviously have to bear the burden of his failure.

159. On the basis of what has just been said, it is submitted that it would be unnecessary, and possibly misleading, to include in a regulation of the régime of "historic waters" a general statement regarding the burden of proof. It would seem preferable to leave that question to be solved by the procedural rules which may be applicable in a particular case.

E. Legal status of the waters regarded as "historic waters"

160. The main question to be discussed in this section is whether "historic waters" are internal waters of the coastal State or are to be considered as part of its territorial sea. The importance of this problem lies in the fact that, according to the international law of the sea, the coastal State must allow the innocent passage of foreign ships through its territorial sea, but has no such obligation with respect to its internal waters.

161. As far as "historic bays" are concerned, the matter was dealt with in paragraphs 94-136 of the Secretariat memorandum on "historic bays" (A/CONF.13/1), and reference is made to the material and discussion which may be found there.

162. In paragraph 101 of the memorandum it is pointed out that, until the International Law Commission in its drafts on the law of the sea made a clear distinction between the "territorial sea" and "internal waters", the terminology used both in the doctrine and in State practice was ambiguous. "Territorial waters" could be used as a term comprehending both the "territorial sea" and "internal waters"; what is now known as "internal waters" was therefore often referred to as "territorial waters". In attempting to ascertain the opinions of authors and Governments in this field, one has therefore to take care not to be misled by the uncertain terminology used.

163. If allowance is made for this problem of terminology, the dominant opinion, as gathered from the statements assembled in the memorandum, seems to be that "historic bays" the coasts of which belong to a single State are internal waters. This was to be expected, for it is generally agreed that the waters inside the closing line of a bay are internal waters and that the territorial sea begins outside that line.

164. On the other hand, it should be recalled that the right to "historic bays" is based on the effective exercise of sovereignty over the area claimed, together with the general toleration of foreign States. The sovereignty exercised can be either sovereignty as over internal waters or sovereignty as over the territorial sea. In principle, the scope of the historic title emerging from the continued exercise of sovereignty should not be wider in scope than the scope of the sovereignty actually exercised. If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea. For instance if the claimant State allowed the innocent passage of foreign ships through the waters claimed, it could not acquire an historic title to these waters as internal waters, only as territorial sea.

165. The seeming contradiction between the statement that "historic bays" are internal waters, and the conclusion that waters claimed on the basis of the exercise of sovereignty as over the territorial sea cannot be internal waters but only part of the territorial sea, is really one of terminology. In the latter case, it would be preferable not to speak of an "historic bay" but of "historic waters" of some other kind.

166. What was said above refers to "historic waters", the coasts of which belong to a single State. The principle set out in paragraph 164 would, however, apply in the case of bays bordered by two or more States as well. Whether the waters of the bay are internal waters or territorial sea would depend on what kind of sovereignty was exercised by the coastal States in the formative period of the historic title to the bay.

167. The same principle also applies to "historic waters" other than "historic bays". These areas would be internal waters or territorial sea according to whether the sovereignty exercised over them in the course of the development of the historic title was sovereignty as over internal waters or sovereignty as over the territorial sea.

F. Question of a list of "historic waters"

168. It is easy to see that claims to "historic waters" may be a source of considerable uncertainty regarding the delimitation of the maritime domain of States. As was shown above, the determination of the question whether or not such a claim is legitimate depends to a large extent on the evaluation of the circumstances in the particular case. Even if general agreement was reached on the principles involved, the application of these principles would not be without complications. The question how to avoid or reduce this uncertainty has held the attention of both authors and Governments, especially in connexion with the attempts to codify the rules of international law regarding the territorial sea.[111]

169. In the course of the preparatory work for the 1930 Hague Codification Conference, Schücking, the rapporteur of the sub-committee dealing with problems connected with the law of the territorial sea, suggested the establishment of an International Waters Office which would register rights possessed by the riparian States outside the proposed fixed zone of their territorial seas, including rights to "historic waters". Applications for registration of such rights could be made within a time limit and application could be opposed by other States within a time limit. A procedure was also provided for settling disputes arising in case of such opposition.[112] The idea of an International Waters Office was however later dropped by the rapporteur.[113]

170. Bustamante in his "project of convention", prepared in order to help the work of the 1930 Codification Conference, suggested a similar scheme, with the Secretariat of the League of Nations playing a role corre-

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[111] See for instance references in Gidel, *op. cit.*, pages 636-638.

[112] League of Nations document C.196.M.70.1927.V, pages 38-41 and 58.

[113] *Ibid.*, page 72.

sponding to that of the International Waters Office in the Schücking proposal.[114]

171. In the discussions at the 1930 Codification Conference, the representative of Greece stated that it would be useful to adopt Schücking's proposal

"that an international organ should be established to draw up in advance a list of historic bays".[115]

172. The representative of Great Britain said:

"May I add one other thing? It is quite clear that neither this Conference nor any Committee nor Sub-Committee of it could possibly undertake to draw up a list of historic bays. Yet the matter is one of great importance, and some machinery ought to be devised by which the various nations of the world can exchange views on this point, with the object ultimately of obtaining a list of historic bays agreed internationally.

"At a later stage, I shall propose that the Conference should suggest, before its work is completed, the setting up of some small body which might examine the claims of the various nations to historic bays with a view to making a report and possibly recommendations on the subject at a later date, to Geneva or elsewhere. The subject is one which has caused much friction and much dispute in the past and this seems to be a golden opportunity first of all to settle the principles on which the classification is to be based, and then, having settled the principles, to agree upon some list which will be binding for the future."[116]

173. Finally the representative of Portugal spoke in the same sense as follows:

"In the considerations it adduced today, the British delegation spoke of the establishment of an international organization. I venture to remind you that article 3 of Professor Schücking's draft speaks of the creation of an International Waters Office. After discussion by the Committee, Professor Schücking agreed to omit that article. I brought it forward again, but it was not taken into account either by the Committee of Experts or by the Preparatory Committee.

"This idea has now been put forward once again. On behalf of the Portuguese delegation, I wish to say that, from the general point of view, I am prepared to agree to the establishment of such an organization, provided that the character and functions with which it is endowed are satisfactory."[117]

174. The Second Committee of the Codification Conference in its report referred to the question of "historic waters" and, as was seen above, stated that the work of codification could not affect such rights. The Committee thereafter added:

"On the other hand, it must be recognized that no definite or concrete results can be obtained without determining and defining those rights. The Committee realizes that, in this matter too, the work of codification will encounter certain difficulties."[118]

175. While it no doubt would be convenient and desirable from the point of view of clarity and certainty to establish an agreed list of "historic waters", it is doubtful whether a practicable approach to the problem would be to ask Governments to register their claims within a certain time and likewise request opponents of the claims to register their objections within a certain time. The advantage would, of course, be, after the expiration of the deadlines, that the unopposed claims would be considered as accepted, that no new claims could be made and that only the opposed claims would have to be settled. One weakness of such a scheme is, however, that it would be binding only on the States adhering to it, so that its effectiveness would depend upon how many and perhaps which States accepted it. Unless adherence by the totality of the States could be achieved, new claims could, in any case, not be excluded. Moreover, the scheme would involve the obvious danger that it might provoke a number of unnecessary disputes, as States would be tempted, in order to be on the safe side, to overstate both their claims and their objections. The net result might be less rather than more certainty.

176. It could therefore be argued that little advantage would be achieved by undertaking the rather formidable task of establishing a list of "historic waters". It might also be said that such an enterprise would be pointless as long as the question of the breadth of the territorial sea has not been settled. Under these circumstances the question is, whether it would not be preferable to limit the study to the principles of the matter and leave particular cases to be settled if and when they become the object of an actual dispute.

G. Settlement of disputes

177. Should a dispute arise, it would, however, be useful if means for the settlement of disputes were already agreed upon. It might therefore be desirable to supplement any agreement on substantive rules or principles relating to "historic waters" by provisions for the settlement of disputes regarding the interpretation or application of such rules or principles. As to the procedure to be followed in regard to such settlement, one might use as a pattern either the machinery set up by the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas[119] or the methods outlined in the Optional Protocols concerning the Compulsory Settlement of Disputes adopted at the 1958 Geneva Conference on the Law of the Sea[120] and at the 1961 Vienna Conference on Diplomatic Intercourse and Immunities.[121]

178. In the former case, disputes would be referred to a special commission, unless the parties agreed to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations. The members of the commission would be named by agreement between the States in dispute or, failing agreement, by the Secretary-General of the United Nations.

179. If on the other hand the pattern of the optional protocols is followed, disputes would be brought before the International Court of Justice by the application of one of the parties. The parties could agree to resort to an arbitral tribunal instead of the Court, and they could also agree to adopt a conciliation procedure before going to the Court.

180. The settlement of disputes regarding rights to "historic waters" is complicated by a peculiar difficulty. If the final decision in a dispute goes against the State claiming the area, it might be expected that the State would give up its claim and the matter would be settled once and for all. On the other hand, should the decision be in favour of the State claiming the area, this decision would bind only the other party to the dispute, and other States might later return to the charge and open up new disputes regarding the claim. The same could of course happen when the claiming State loses, if that State, while respecting the decision in its relations with the other party to the dispute continued to exercise sovereignty over the area in relation to other States or their citizens. In other words, although a dispute regarding an area of "historic waters" was finally settled between the State claiming the area and an opposing State, the matter whether this area is "historic waters" could be reopened by other States, which would not be bound by the first settlement. Even if the dispute was decided by the highest international court in existence, the International Court of Justice, its decision would be binding only on the parties to the dispute, as stipulated in Article 59 of its Statute. A third State would still be legally free to dispute the claim, and a final decision of the question whether an area is or is not "historic waters" would therefore be hard to obtain. Naturally, if in one dispute it decided that the area was "historic waters" of a certain State, the International Court of Justice in all probability would come to the same conclusion in another dispute; similarly, a decision by a special commission or an arbitral decision on the matter in one case would probably carry considerable weight in another case. Still, the question would not be legally settled once and for all, and the possibility of new disputes would remain.

181. The experience of the two above-mentioned conferences indicates that it would probably be practical to embody the provisions for the settlement of disputes in a separate optional protocol. Some States might be willing to accept certain substantive rules or principles on "historic waters", but not to submit themselves to a compulsory procedure for the settlement of disputes. By including the substantive and the procedural rules in separate instruments, these States would be able to adhere to the former although they could not subscribe to the latter.

III. Conclusions

182. The above discussion of the principles and rules of international law relating to "historic waters, including historic bays" would seem to justify a number of conclusions, provided that it is understood that some of these must necessarily be highly tentative and more in the nature of bases of discussion than results of an exhaustive investigation of the matter.

183. In the first place, while "historic bays" present the classic example of historic title to maritime areas, there seems to be no doubt that, in principle, a historic title may exist also to other waters than bays, such as straits or archipelagos, or in general to all those waters which can form part of the maritime domain of a State.

184. On the other hand, the widely held opinion that the régime of "historic waters" constitutes an exception to the general rules of international law regarding the delimitation of the maritime domain of the State is debatable. The realistic view would seem to be not to relate "historic waters" to such rules as an exception or not an exception, but to consider the title to "historic waters" independently, on its own merits. As a consequence one should avoid, in discussing the theory of "historic waters", to base any proposed principles or rules on the alleged exceptional character of such waters.

185. In determining whether or not a title to "historic waters" exists, there are three factors which have to be taken into consideration, namely,

(i) The authority exercised over the area by the State claiming it as "historic waters";

(ii) The continuity of such exercise of authority;

(iii) The attitude of foreign States.

186. First, effective exercise of sovereignty over the area by the claiming State is a necessary requirement for title to the area as "historic waters" of that State. Secondly, such exercise of sovereignty must have continued during a considerable time so as to have developed into a usage. Thirdly, the attitude of foreign States to the activities of the claiming State in the area must have been such that it can be characterized as an attitude of general toleration. In this respect the same weight need not be given to the attitude of all States. Particularly, it would seem reasonable, in the case of a State (or States) claiming historic title to waters bordered by two or more States, to accord special importance to the attitude of the other riparian State (or States).

187. It is apparent from this description of the requirements which must be fulfilled for a title to "historic waters" to emerge, that the existence of such a title is to a large extent a matter of judgement. A large element of appreciation seems unavoidable in this matter, but it is possible that Government comments on the three factors listed above could yield a number of concrete examples which might serve as illustration and guidance.

188. The burden of proof of title to "historic waters" is on the State claiming such title, in the sense that, if the State is unable to prove to the satisfaction of whoever has to decide the matter that the requirements necessary for the title have been fulfilled, its claim to the title will be disallowed. In a dispute both parties will most probably allege facts in support of their respective contentions, and in accordance with general procedural rules each party has the burden of proof with respect to the facts on which he relies. It is therefore doubtful whether the general statement that the burden of proof is on the State claiming title to "historic waters", although widely accepted, is really useful as a definite criterion.

189. The legal status of "historic waters", i.e., the question whether they are to be considered as internal waters or as part of the territorial sea, would in principle depend on whether the sovereignty exercised in the particular case over the area by the claiming State and forming a basis for the claim, was sovereignty as over internal waters or sovereignty as over the territorial sea. It seems logical that the sovereignty to be acquired should be commensurate with the sovereignty actually exercised.

190. The idea of establishing a definitive list of "historic waters" in order to diminish the uncertainty which claims to such waters might cause has serious

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[114] The relevant provisions of the Bustamante procedure may be found in the Secretariat memorandum on "historic waters", paragraph 209.

[115] *Acts of the Conference for the Codification of International Law*, vol. III, page 105.

[116] *Ibid.*, pages 104-105.

[117] *Ibid.*, page 107.

[118] *Ibid.*, page 211.

[119] *United Nations Conference on the Law of the Sea, Official Records*, United Nations publication, Sales No.: 58.V.4, vol. II, page 140.

[120] *Ibid.*, page 145.

[121] Document A/CONF.20/12, in *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, United Nations publication, Sales No.: 62.X.1, vol. II, page 89.

drawbacks. An attempt to establish such a list might induce States to overstate both their claims and their opposition to the claims of other States, and so give rise to unnecessary disputes. Moreover, it would in any case be extremely difficult, not to say impossible, to arrive at a list which would be really final.

191. On the other hand, it would be desirable to establish a procedure for the obligatory settlement of disputes regarding claims to "historic waters". As a pattern for such a procedure one might use the relevant provisions of the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas; in that case disputes would be referred to a special commission, unless the parties agreed on another method of peaceful settlement. Or one could follow the optional protocols adopted at the 1958 Geneva Conference on the Law of the Sea and the 1961 Vienna Conference on Diplomatic Intercourse and Immunities; disputes would then lie within the compulsory jurisdiction of the International Court of Justice, subject to the possibility of having recourse also to a conciliation procedure or to arbitration.

192. For practical reasons, an agreement on the settlement of disputes might preferably be included in a protocol separate from any instrument containing substantive rules on "historic waters". In that way, States which would be unwilling to subscribe to a procedure for the compulsory settlement of disputes could adhere to the substantive rules agreed upon.

PX 58

L/SFP:RTYingling

"Status of Cook Inlet"

In reply refer to
L/SFP

MAY 3 1962

Dear Mr. Barry:

Your letter of April 17, 1962 states that you have been informed that the State of Alaska intends to offer for sale oil and gas leases in portions of the Cook Inlet, and that while the exact areas are not known, it is understood that they lie more that three miles seaward of the line joining the East and West Forelands and are more than three miles from shore. You add that in the circumstances the question has arisen whether the areas intended to be leased are State owned under the Submerged Lands Act (43 USC 1301-1315) or whether they lie beneath the high seas and are consequently subject to Federal leasing under the Outer Continental Shelf Lands Act (43 USC 1331-1343).

Your letter states further that in 1961 a comparable question arose with respect to certain areas lying landward of a line joining the East and West Forelands and that the Attorney General of Alaska submitted an opinion, No. 25, of November 30, 1961, in support of Alaska's claim to lease those areas. In that opinion, a copy of which was enclosed with your letter, the position was taken that the area of Cook Inlet landward of the line joining the East and West Forelands is a bay under customary rules of international law and, furthermore, that the whole of Cook Inlet is an historic bay and, consequently, inland waters of Alaska. It appears from a copy of the Secretary of Interior's letter of December 12, 1961 to the Governor of Alaska, also enclosed with your letter, that he recognized Alaska's claim to the area inside the Forelands but that the question of Cook Inlet's status as an historic bay was left for future resolution.

Finally, your letter states that Alaska intends to publish notice of the sale of leases in the areas now in question about May 15, and you request the Department's views and any relevant information to assist you in making a decision.

That

The Honorable
Frank J. Barry,
Office of the Solicitor
Department of the Interior

COPY

Letter from Abram Chayes, The Legal Adviser of the Department of State, to Frank J. Barry, Solicitor of the Department of the Interior, dated May 3, 1962. A copy of this letter was sent to the State of Alaska on January 23, 1969.

BEST COPY AVAILABLE

That part of the opinion of the Attorney General of Alaska which relates to the area of Cook Inlet landward of a line joining the East and West Forelands is regarded as basically sound under customary international law. However, in support of Alaska's claim to all of Cook Inlet as an historic bay, the Attorney General cited the case of The Kodiak, 53 F. 126 (1892), and certain commercial fisheries regulations issued in 1939. No comment will be made on the fisheries regulations at this time because these are matters within your special knowledge and in view of what is said hereafter, it is not conceived that they would be decisive.

The case of The Kodiak involved a schooner by that name which was seised by a United States Government vessel and charged with violating the provision of a United States law (R.S. 1956) forbidding the killing of fur-bearing animals within the limits of the territory of Alaska or the waters thereof. The vessel was seized at a point some three or four miles landward of a line drawn across the entrance to Cook Inlet from Cape Douglas to Point Bede and about twenty miles distant from the nearest shore. The distance between Cape Douglas and Point Bede is about forty-seven miles. The jurisdiction of the court was challenged on the ground that the laws of the United States had no force beyond a marine league from the shore line. Although citing some authority which I regard as of dubious applicability the Court did not rest its decision on such authority but apparently on the ground that the orders of the United States Government to the ship which made the seizure must be presumed to have been given in the assertion on the part of the Government of territorial jurisdiction over the waters in question and that such claims of jurisdiction or dominion were of a political nature and binding on the courts.

An extensive search of the records of the Department and of the historic records of the Government in the National Archives has revealed no evidence that the United States has ever at any time claimed the waters of Cook Inlet as internal waters of the United States. In view of this record, the assumption by the Court in The Kodiak case that the arrest indicated that the United States asserted te..itorial jurisdiction over all of Cook Inlet appears to be without substantial basis. It seems likely that the orders of the seizing vessel were in error or were misapplied. Furthermore, the Kodiak was a United States vessel. There is no evidence that R.S. 1956 was ever applied to a foreign vessel in the same area.

Article 7 of the Convention on the Territorial Sea and the Contiguous Zone, which was adopted at the First Law of the Sea Conference at Geneva in 1958, and which was ratified by the President on March 24, 1961, deals with the status of bays, the coasts of which belong to a single State. Paragraph 2 of that article defines a bay and prescribes the semi-circular test. Paragraph 3 describes the method of measurement of the area of the

bay,

bay, and paragraph 4 provides that the closing line of the bay shall not exceed twenty-four miles. Paragraph 5 states that where the distance between the low water marks of the natural entrance points of the bay exceeds twenty-four miles, a straight base line of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length. Although the Convention is not yet in force according to its terms because twenty-two States have not yet ratified or acceded to it, nevertheless, it must be regarded in view of its adoption by a large majority of the States of the world as the best evidence of international law on the subject at the present time. This is particularly so in view of the rejection by the International Court of Justice in the Anglo-Norwegian Fisheries case of the so-called ten-mile rule previously considered as international law by the United States and many other countries. Furthermore, in view of the ratification of the Convention by the President with the advice and consent of the Senate, it must be regarded as having the approval of this Government and as expressive of its present policy.

Representatives of the Department of Justice and of the State of Louisiana who have been endeavoring to reach agreement on a base line along the coast of Louisiana to be used in delimiting the areas of the submerged lands off that coast over which the Federal Government and the State of Louisiana shall respectively exercise jurisdiction have been following the provisions of the Convention referred to above, including the twenty-four mile closing line for bays.

In view of the foregoing, it is my opinion that there is no basis for the assertion by Alaska of a claim to all of Cook Inlet as historic waters. It is my further view that the United States has the right under international law to claim all of Cook Inlet inside of a twenty-four mile closing line as internal waters of the United States. The effect of this in view of the provisions of the Submerged Lands Act and of Section 6(n) of the Alaska Statehood Act (72 Stat. 339, 343) would be to make these waters internal waters of Alaska and to give it title to the resources of the submerged lands under this area and under the three-mile territorial sea measured from the twenty-four mile closing line as the base line.

Sincerely yours,

For the Acting Secretary of State:

Abram Chayes
The Legal Adviser

L:L/SFP:RTYingling:edk 5/2/62

COPY

PX 69

DEPARTMENT OF STATE

Washington, D.C. 20520

July 3, 1969

Mr. Shiro Kashiwa
Assistant Attorney General
Lands and Mineral Resources Division
Department of Justice
Washington, D.C. 20530

re: United States v. State of Alaska
Civil No. A-45-67

Dear Mr. Kashiwa:

In connection with the above litigation you have asked whether the Department of State considers that Cook Inlet is a historic bay or could be considered as such on the basis of criteria used by the United States in determining whether a bay can be considered historic consistently with international law.

On May 3, 1962, by letter from the Legal Adviser, Mr. Abram Chayes, this Department informed the Department of Interior that "an extensive search of the records of the Department and of the historic records of the Government in the National Archives has revealed no evidence that the United States has ever at any time claimed the waters of Cook Inlet as internal waters of the United States," and that it was the opinion of the Legal Adviser "that there is no basis for the assertion by Alaska of a claim to all of Cook Inlet as historic waters." Since May 1962 the United States has not asserted any claim over Cook Inlet as historic waters and has not exercised sovereignty over the area outside the territorial sea measured from the twenty-four (24) mile closing line described in the pre-trial statement for the United States in the above case.

In the study of the United Nations Secretary General entitled "Juridical Regime of Historic Waters, Including

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7 JUL 7 1969
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LANDS & NATURAL RES. DIV.

Historic Bays," A/CN.4/143 (March 9, 1962), three factors are listed that must be considered in determining whether a State has acquired historic title (pp. 37-38):

> (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have developed into a usage. More controversial is a third factor, the position which foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of a historic title; others think that absence of opposition by these States is sufficient.

In evaluating claims to historic bays, the Department of State follows these criteria, taking the position with respect to the third that a showing of acquiescence is required. This is reflected in the following statement made by the United States in its note of March 6, 1958, to the Soviet Union regarding Soviet attempts to establish a historic basis for its claim to Peter the Great Bay (38 Dept. of State Bulletin 461):

> "Encroachments on the high seas are of concern to the entire world and neither internal regulations of the Russian Government, which were not communicated to the Governments of other States, nor fishing agreements between the Union of Soviet Socialist Republics and Japan could be sufficient to establish the degree of acceptance on the part of the rest of the world that would be necessary to justify the Government of the Union of Soviet Socialist Republics in claiming that the body of waters referred to above constitutes internal waters

of the Soviet Union either as an historic bay or under any other principle of international law."

In its conduct of United States foreign relations the Department of State does not consider that Cook Inlet is a historic bay. On the basis of the foregoing, it is my opinion that Cook Inlet should not be considered a historic bay.

Sincerely yours,

Leonard C. Meeker

Leonard C. Meeker
The Legal Adviser

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OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

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PAGES 762

PAGES 763

PAGES 764

Form No. USA-20 U.S. Attorney
(Rev. 10-9-58) P.O. BOX 680
ANCHORAGE, ALASKA 99501

152

CERTIFICATE OF SERVICE BY MAIL

UNITED STATES,)
)
v.) Civil No. A-45-67
)
STATE OF ALASKA,)

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the _____ District of Alaska and is a person of such age and discretion as to be competent to serve papers.

That on Sep 20, 1971 he served a copy of the attached

Motion for Substitution of Exhibit
Plaintiff's Response to Defendant's Third Request for Admission dated August 4, 1971

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Anchorage, Alaska.

Addressee(s): Charles K. Cranston
Assistant Attorney General
360 K Street, Suite 105
Anchorage, Alaska 99501

SUBSCRIBED and SWORN to before me this 20 day of Sep 1971

Notary Public
My commission expires 11/6/74

Donna G. Coker

PX 74

Executive Order.

By virtue of the authority vested in me by the Act of Congress entitled, "An Act to give effect to the Convention between the Governments of the United States, Great Britain, Japan and Russia, for the preservation and protection of the fur seals and sea otters which frequent the waters of the North Pacific Ocean, concluded at Washington July 7, 1911," approved August 24, 1912, as well as by virtue of any and all other acts of Congress conferring authority upon me in the premises, I hereby order and direct

1. That the Bureau of Fisheries patrol boats WIDGEON, MURRE, AUKLET, PETREL, EIDER, and KITTIWAKE patrol the waters frequented by the seal herd or herds and sea otter in the protection of which the United States is especially interested.

2. That the masters of these vessels and Edward M. Ball, Assistant Agent, Michael J. O'Conner, Warden, John T. White, Warden, and Howard H. Hungerford, Warden, are hereby designated and authorized to search any vessel of the United States in port or in territorial waters of the United States or on the high seas when suspected of having violated or being about to violate the provisions of the Convention between the Governments of the United States, Great Britain, Japan and Russia, concluded at Washington July 7, 1911, or the said Act of August 24, 1912, or of any regulation made thereunder, and to seize such vessel and the officers and crew thereof and bring them into the most accessible port of the Territory of Alaska or the States of California, Oregon or Washington, for trial.

WARREN G HARDING

THE WHITE HOUSE,
April 9, 1923.

[No. 3816.]

Executive Order

By virtue of the authority vested in me by the Act of Congress entitled, "An Act to give effect to the Convention between the Governments of the United States, Great Britain, Japan and Russia, for the preservation and protection of the fur seals and sea otters which frequent the waters of the North Pacific Ocean, concluded at Washington July 7, 1911," approved August 24, 1912, as well as by virtue of any and all other acts of Congress conferring authority upon me in the premises, I hereby order and direct

1. That the Bureau of Fisheries patrol boats *Widgeon*, *Murre*, *Auklet*, *Petrel*, *Eider*, and *Kittiwake* patrol the waters frequented by the seal herd or herds and sea otter in the protection of which the United States is especially interested.

2. That the masters of these vessels and Dennis Winn, Agent, Edward M. Ball, Assistant Agent, Shirley A. Baker, Assistant Agent, Lemuel G. Wingard, Assistant Agent, Michael J. O'Connor, Warden, William E. Baumann, Warden, and Charles Petry, Warden, are hereby designated and authorized to search any vessel of the United States in port or in territorial waters of the United States or on the high seas when suspected of having violated or being about to violate the provisions of the Convention between the Governments of the United States, Great Britain, Japan and Russia, concluded at Washington July 7, 1911, or the said Act of August 24, 1912, or of any regulation made thereunder, and to seize such vessel and the officers and crew thereof and bring them into the most accessible port of the Territory of Alaska or the States of California, Oregon or Washington, for trial.

CALVIN COOLIDGE

THE WHITE HOUSE,
April 11, 1924.

[No. 3988.]

Executive Order

It being expedient for the enforcement of the act for the protection of the northern Pacific halibut fishery, approved June 7, 1924, that a patrol be maintained in certain waters, and that public vessels be designated for that purpose and officers be designated to enforce said act:

THEREFORE, IT IS HEREBY ORDERED:

1. That a patrol be maintained in the territorial waters of the United States and the high seas, including Bering Sea, extending westerly from the territorial waters of the United States and Canada, to be conducted by any naval or other public vessels on service in such waters and including specifically the following named vessels of the Bureau of Fisheries: *Widgeon*, *Murre*, *Auklet*, *Petrel*, *Eider*, *Kittiwake*. *Blue Wing*, *Merganser*, and *Scoter*.

2. That the masters of such vessels, and the agents, assistant agents, inspectors and wardens of the Bureau of Fisheries are hereby designated as officials to exercise all powers of search and seizure conferred by said act upon persons so designated by the President.

CALVIN COOLIDGE

THE WHITE HOUSE,
November 3, 1924.

[No. 4098]

569-731 O - 75 - 11

Executive Order

It being expedient for the enforcement of the act for the protection of the Northern Pacific halibut fishery, approved June 7, 1924, that a patrol be maintained in certain waters, and that public vessels be designated for that purpose and officers be designated to enforce said act:

THEREFORE, IT IS HEREBY ORDERED:

1. That a patrol be maintained in the territorial waters of the United States and the high seas, including Bering Sea, extending westerly from the territorial waters of the United States and Canada, to be conducted by any naval or other public vessels on service in such waters and including specifically the following named vessels of the Bureau of Fisheries: Widgeon, Murre, Auklet, Petrel, Eider, Kittiwake, Blue Wing, Merganser, Scoter, Brant, Teal, Crane, and Red Wing.

2. That the masters of such vessels, and the agents, assistant agents, inspectors and wardens of the Bureau of Fisheries are hereby designated as officials to exercise all powers of search and seizure conferred by said act upon persons so designated by the President.

CALVIN COOLIDGE

THE WHITE HOUSE,
October 25, 1928.

[No. 4083]

Executive Order

PROTECTION OF THE NORTHERN PACIFIC HALIBUT FISHERY

It being expedient for the enforcement of the act for the protection of the northern Pacific halibut fishery, approved May 2, 1932, that a patrol be maintained in certain waters, and that public vessels be designated for that purpose and officers be designated to enforce said act:

THEREFORE IT IS HEREBY ORDERED:

1. That a patrol be maintained in the territorial waters of the United States and the high seas, including Bering Sea, extending westerly from the territorial waters of the United States and Canada, to be conducted by any naval or other public vessels on service in such waters and including specifically the following-named vessels of the Bureau of Fisheries: Widgeon, Murre, Auklet, Petrel, Eider, Kittiwake, Blue Wing, Merganser, Scoter, Brant, Teal, Crane, Red Wing, and Penguin.

2. That the masters of such vessels, and the agents, assistant agents, inspectors, and wardens of the Bureau of Fisheries are hereby designated as officials to exercise all powers of search and seizure conferred by said act upon persons so designated by the President.

HERBERT HOOVER

THE WHITE HOUSE,
June 3, 1932.

THE WHITE HOUSE,
June 3, 1932.

[No. 5854]

PX 75

COPY

Director, FWS, Washington, D. C. March 31, 1952

Regional Director, FWS, Juneau, Alaska

Application of Federal Fishery Regulations - 3 Mile Limit

Since recent discussions on the Japanese Treaty, there has been considerable speculation in Alaska as to applicability of Federal Fishery Regulations beyond the three mile limit. It is rapidly becoming a matter of real concern to us.

It is my understanding Federal law can be made to apply to our nationals wherever they are on the high seas, at least if they are sailing under the U.S. flag. This seems to be born out in the Florida sponge case, Skiriotes v. Florida, 313 U.S. 69. This decision seems to imply jurisdiction may be claimed by States or the Government. Other decisions, such as U.S. v. California, 332, U.S. 19, and Takahasi v. Commission, 334 U.S. 410, seem to imply dominant Federal control of possibly all ocean fisheries. It even indicates Federal ownership of all marine life and ocean bottom. This would refer, of course, to the Territorial waters and bays that might be considered "historic".

The Alaska Cano Law grants authority for our Agents or designated officers to board and search U.S. vessels on the high seas when there is reason to believe they are in violation of said law.

My question here relates only to U.S. Fishermen on vessels registered under U.S. flag. There is a possibility now of development of a plan by drift gill net boats to attempt to fish lower Cook Inlet without regard to our regulation for that area, on the theory that the regulations do not apply beyond the 3 mile limit. As you are aware, the Inlet is several times 10 miles wide, the maximum distance shore to shore for inclusion of bays as Territorial waters. There is a question whether we could consider Cook Inlet a "historic" bay. We understand Canadian halibut boats have operated within that area under the International Halibut regulations.

The statute prohibiting the landing of the fish taken outside of Alaska would be of little value, since the season would not be closed in all of the ports they could reach, nor all of the time.

We would like to have an opinion and guiding policy on applicability of regulations beyond the 3 mile limit, plus any special instructions, if required, for search, apprehension, custody, and Court action. If our regulations do apply, as I believe they do under above cited cases, is it necessary to include wording in them to that effect?

While it may be a separate matter, I suggest terms of the proposed Japanese Treaty be kept in mind while doing any research on above to see what steps we might take to establish "historic" rights in offshore waters. Perhaps we need some regulations and at least token studies to help establish our exclusive right to some fisheries which have always been strictly U.S. ventures.

CLARENCE J. RHODE

COPY

OFFICE MEMORANDUM • UNITED STATES GOVERNMENT

TO: Regional Director, Juneau DATE: May 1, 1952

FROM: Chief, Branch of Alaska Fisheries

SUBJECT: Application of Alaska fishery laws and regulations beyond the 3-mile limit.

Reference is made to your memorandum of March 31 requesting information concerning the applicability of the Alaska fishery laws and regulations to waters beyond the 3-mile limit. You suggest that, in view of certain court decisions, these laws and regulations might apply to our nationals wherever they are on the high seas and would not necessarily be restricted to Territorial waters.

The Alaska fishery law refers to "the waters of Alaska over which the United States has jurisdiction" and the regulatory areas described and set apart by the regulations, and to which the regulations apply, are described in every instance as including "all Territorial coastal and tributary waters of Alaska." It is the opinion that these laws and regulations apply to fishing in the described areas only and do not apply to fishermen operating elsewhere, even though they may be American citizens on vessels registered under the American flag.

For the purpose of administering the Alaska fishery laws and regulations, it is felt that Territorial waters or "waters of Alaska over which the United States has jurisdiction" is limited to the waters extending for a distance of 3 miles off shore and to all waters within the headlands of bays, straits, and inlets. Admittedly, there may be some difficulty with respect to defining the offshore waters in such places as Bristol Bay, lower Cook Inlet, or lower Clarence Strait, where the distance from headland to headland is more than 10 miles. For all practical purposes, however, it is felt that American citizens fishing in Alaskan waters can be held to observe the Alaska fishery laws and regulations. If situations develop wherein there is an extensive offshore fishery, new legislation undoubtedly will be necessary to cope with it.

(SIGNED) SETON H. THOMPSON
Seton H. Thompson, Chief
Branch of Alaska Fisheries

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FWS, Washington, D.C. DATE: December 11, 1952

FROM : Regional Director, FWS, Juneau, Alaska

SUBJECT: Determination of Seaward Boundaries of Alaska

In wire of even date we called your attention to the hearings of the Engle Subcommittee scheduled for next week as part of its investigation and study to determine the proper criteria for fixing the seaward boundaries of the United States and the Territory of Alaska. This investigation was authorized by H.R. 676 introduced by Congressman Yorty. It occurred to us that someone in the Washington office might consider it worthwhile to look in on this hearing for the purpose of deciding upon the propriety of introducing testimony relative to problems of Alaska fishery conservation in extra-territorial waters. Questions on this subject recur with increasing frequency, and several recent incidents have been threatened, although they never actually materialized. Branch of Alaska Fisheries is familiar with the contention of some operators of mobile gear, especially trollers, that no observance of the commercial fishery regulations is required outside the three-mile limit.

Latest correspondence with the Central office on this subject is Seton Thompson's memorandum of May 1, 1952, in which he states the opinion that the commercial fishing regulations may be applied only within territorial waters, which he interprets as extending for a distance of three miles offshore. Enclosed are two copies of an article entitled, "The Three-Mile Limit," by Lcdr. Emory C. Smith, U.S. Navy, which appeared in the JAG JOURNAL, a publication devoted to legal matters and Judge Advocate General decisions of interest to the military. Principal emphasis of Commander Smith's article is between the absolute sovereignty which a State may maintain over waters within three miles of its coast as contrasted to jurisdiction or control, which may be exercized over more extended but contiguous areas of peculiar interest to the state, such as its fisheries. The Hague decision in the recent fishery controversy between England and Norway accepts the promise that a nation may exercise control in specific matters which within the bounds of reasonableness are peculiar to its own welfare and interest. It is our hope that the gradual evolution of State Department policy and international law will eventually establish the authority of the United States to protect and manage domestic stocks of fish which range beyond the narrow confines of territorial waters.

Authority over the high seas salmon fishery will probably be achieved through the workings of the Japan-Canada-United States North Pacific Fishery Treaty, which should surely provide that the signatory nations may control their own nationals anywhere within the treaty area.

BEST COPY AVAILABLE

In the meantime, however, it may be well worth while to keep track of the Engle Subcommittee activities and to make sure that the record of its proceedings takes full cognizance of fishery protection problems in the North Pacific and the Bering Sea.

CLARENCE J. RHODE
Regional Director

Attachment

THE THREE-MILE LIMIT--I

By Ledr. Emory C. Smith, U.S.N.

The development of weapons of modern warfare has caused many students of international affairs to wonder whether or not the 3-mile limit of territorial waters affords sufficient protection to the United States.

This is the first of two articles discussing a brief history of the 3-mile limit, and what appear to be exceptions to the American doctrine which recognizes the 3-mile limit as a rule of international law. The second article, which will appear in an early issue of the JAG JOURNAL, will discuss the right of self-defense beyond the 3-mile limit as well as recent developments pertaining to the control of the air space reservations.

Few topics have provoked more controversy or elicited more divergent views and opinions than that of the extent of territorial waters. The practice of nations viewed over a period of 200 years ranges from one extreme to the other. It is possible to take any of several positions relative to the extent of a territorial sea or relative to the nature of the jurisdiction therein, and to support each by the authority of text writers and numerous illustrations drawn from international events, ancient and modern. It is felt that the greater part of the disagreement as to the extent of territorial waters is basically due to the concept of jurisdiction. Having recognized this reason for the disagreement we may make a useful distinction between claims to territorial waters and claims of jurisdiction or control upon the high seas, to explain the apparent disagreements pertaining to the question.

This idea is corroborated by Prof. Hyde in his treatise on International Law, who states in substance that there is a real distinction between a right of sovereignty over a particular area and a right to exercise a preventive or protective jurisdiction over or within an area that is outside of the national domain. This basic distinction between sovereignty and preventive or protective jurisdiction must be kept firmly in mind in order to rationalize the varying degrees of authority which a nation may exercise over the sea.

To discuss at any length the 3-mile limit would be an academic, time-consuming and unnecessary discourse. Suffice

it to say, however, that there exists a preponderance of opinion among the authorities that the 3-mile limit for the marginal sea stands today as a rule of international law. Furthermore, the authorities are practically unanimous in the opinion that within 3 miles of the coast a State may, under international law, exercise any jurisdiction and do any act which it may lawfully do upon its own land territory. In short, a State has sovereignty over waters lying within 3 miles of its coast. While there are some nations which claim jurisdiction over waters more than 3 miles from its coast, the United States has long been a champion of the 3-mile limit.

The first view of our Government as to the territorial limits at sea seems to have been made in a report of a congressional committee, submitted on January 8, 1782 relative to the right of American fisherman to ply their trade, particularly off the Newfoundland banks, to the effect that our Nation did not claim the right of fishing within three leagues of the British shores. On November 8, 1793, Secretary of State Jefferson informed the British and French ministers that "the ultimate extent" of the marginal sea was reserved "for further deliberations." However, Mr. Jefferson went on to state that the President had instructed American officials to restrain the enforcement of their orders "for the present to the distance of one sea league or three geographical miles from the sea shores." This measure was adopted by Congress in the following year when it gave the district courts "cognizance of complaints, by whomsoever instituted, in the cases of captures made within the waters of the United States or within a marine league of the coasts or shores thereof" (sec. 6, Act of June 5, 1794, 1 Stat. 384).

From time to time the United States has reasserted its adherence to the 3-mile limit in various diplomatic notes, court opinions, and by its actions. The Navy War Code of 1900, Art. II, declares: "The territorial waters of a State extend seaward to the distance of a marine league from the lowest water mark of its coast line." And finally, the United States Supreme Court seems to fix American jurisprudence in support of the 3-mile limit in the case of Cunard S.S. Co., et al. v. Mellon (43 S. Ct. 504 (1923)).

While the United States has for nearly 150 years recognized the 3-mile limit and has followed the doctrine of "freedom of the seas," there are notable exceptions which, at first blush, would indicate an inconsistency of position. However, it is reiterated for the sake of emphasis that the rule of international law which recognizes the 3-mile limit as the boundary of that part of the sea which constitutes part of the territory of the littoral State is not inconsistent with the claim to a more extended control on the high seas. As a matter of further emphasis, it is pointed out that the 3-mile zone is in reality "a territorial" sea, coming fully under the domain or sovereignty of the adjoining State.

Perhaps the first apparent departure which our country took from the 3--mile limit principle was when it followed the British lead by passing the Act of March 2, 1799. The Act provided that every ship "bound to any port or place in the United States" might be boarded within four leagues of the American coast, examined, searched, and compelled to show a manifest. It is to be noted that the law had application only to ships which were bound to the United States. The principle of the Act of March 2, 1799, was incidentally considered by the Supreme Court in several cases. The first of these cases was that of Church v. Hubbart, (1804), 2 Cranch 187, in which Chief Justice Marshall, speaking for a unanimous court ruled that a nation might lawfully take steps upon the high seas to protect itself and secure its laws from violation, provided the measures employed satisfy the test of reasonableness.

The Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848 represents another apparent departure from the 3--mile limit principle. The British protest to Art. V of the treaty on the grounds that it extended the 3-mile limit was satisfied when our Government informed the British Government that the treaty only affected the United States and Mexico, and in no way infringed on the rights, under international law, of any other nation.

Another seeming inconsistency in the position of the United States with reference to the 3-mile limit principle occurred during the years 1886-89 in the seizure of certain British sealing schooners in the Bering Sea by U.S. revenue cutters against which the British Government protested.

The matter was settled by arbitration on February 29, 1892. The arbitrators decided that the United States had no right of protection or property in fur seals frequenting the islands of the United States in the Bering Sea when such seals were found outside the ordinary 3-mile-limit. A later treaty, however, was entered into between the United States, Great Britain, Russia, and Japan which prohibited the contracting powers from engaging in sealing in the open seas of the North Pacific Ocean within certain defined areas.

Perhaps the most notable of all "inconsistencies" of this Government with reference to the principle of the 3--mile limit occurred in 1922 when the United States and Great Britain entered into a treaty designed to permit the former to effectively combat the liquor smuggling industry outside the 3-mile limit off the coast of the United States.

As late as December 11, 1941, the President of the United States, by Executive Order, defined for purposes of international defense "defensive sea areas" which extended outside the territorial waters of the United States.

In all of these apparent inconsistencies, it can be seen that the United States was in no way attempting to exercise the same incidents of sovereignty over the high seas which it exercises with respect to its territorial waters within the 3-mile limit. The purpose in each case was limited and specific, and involved only the exercise of a control--in contradistinction to the exercise of a sovereignty--over the waters contiguous to the boundary of the 3--mile limit. In the four instances cited above, the United States has exercised a control outside the 3--mile limit for the purpose of regulating fishing, for enforcement of customs laws and for purposes of self-defense. In every instance set out above, this exercise of control outside the 3--mile limit for the purposes enumerated has been pursuant to treaty with other powers with one notable exception, and that, for the purpose of self-defense.

In addition to the above there have occurred within the past 3 years still other apparent inconsistencies in the United States position with respect to the 3-mile limit. On September 28, 1945, the President of the United States issued two proclamations, the first of which, Proclamation No. 2667, declared as a matter of policy that the natural resources of the subsoil and sea bed of the continental

shelf appertain to the United States, subject to its jurisdiction and control. Simultaneously the President of the United States issued Proclamation No. 2668, which asserted the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States, either unilaterally or in concert with other interested States; the character of the waters as high seas and the right to free navigation were declared to remain unaffected.

The concept of asserting jurisdiction over the subsoil and sea bed of the continental shelf, while not new, is of comparatively recent inception. As early as 1916 a Spanish expert, concerned over the depletion of fisheries, urged that territorial waters be extended to include the whole continental shelf, where the important food species chiefly flourished. Similar recognition of the importance of the shelf with respect to fisheries was being voiced simultaneously by Argentine writers who emphasized the need for adequate control. This concern was reiterated some years later in the League of Nations Committee of Experts for the Progressive Codification of International Law.

In quite another connection, the year 1916 also saw the assertion by the Russian Imperial Government of a claim to certain uninhabited islands north of Siberia on the ground that they formed "the northern constitution of the Siberian continental shelf"--an assertion repeated by the Soviet Government in 1924. Also of significance as a precedent, although it did not refer in terms to the the continental shelf, was the treaty of February 26, 1942, between Venezuela and the United Kingdom, undertaking to dispose of the submarine areas of the Gulf of Paria. By the agreement each State undertook to recognize "any rights of sovereignty or control which have been or may hereafter be lawfully acquired" by the other over submarine areas on their respective sides of an arbitrary boundary line. "Submarine areas" were defined as "the sea bed and the subsoil outside of the territorial waters of the High Contracting Parties."

Soon after the proclamation of the President of the United States asserting jurisdiction and control over the continental shelf adjacent to the United States, several Latin American countries asserted sovereignty over the continental shelf contiguous to their land areas. Among these nations were Mexico, Argentina, Peru, Costa Rica, and Cuba. Costa Rica put forth a claim to the continental shelf on both Atlantic and Pacific coasts of Costa Rica, out to a limit of 200 miles offshore regardless of the depth of water.

As to the proclamation of the President of the United States (No. 2667), no claim on behalf of our country to "sovereignty," "title," or "ownership" of the continental shelf was asserted. However, a summary of the actions of the Latin American States indicates that, while all have relied for support on the United States proclamation of 1945, they have gone considerably beyond their prototype in at least two respects: (1) they undertake to effect a categorical extension of sovereignty over the continental shelf and sea bed; and (2) they propound a further claim to the waters which cover the continental shelf.

It is noted in the Proclamation of the President of the United States (No. 2668) asserting the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States no reference was made to the continental shelf. The claim proceeded on a general theory of the right of a coastal State to protect its contiguous fisheries; the zone concept doubtless was derived from the customs enforcement areas authorized by the Anti-Smuggling Act of August 5, 1935 (49 Stat. 514). However, the Latin American States have sought in their actions to achieve both objectives through a single comprehensive claim to the continental shelf and to the waters over it.

This assertion of sovereignty by the Latin American countries goes beyond anything put forward in either of the United States proclamations. It presumably implies, for example, sovereignty in the air space over the claimed areas--a question of the first importance, for, as will be shown in the succeeding article, there is no right of innocent passage by air. Even on the surface, though rights of free navigation be recognized in such a claim, there is in the claim itself an infringement, in principle at least, of traditional views on the character of the high seas.

The foregoing has sought to give a résumé of the exceptions or apparent inconsistencies of the American position with reference to the 3--mile limit. In view of the present American position it is concluded that there can be no legal extension of the territorial waters of the United States or its possessions beyond the 3-mile limit. To make any unilateral extension of the territorial waters of the United States would be, in effect, to pursue a course directly contrary to the preponderance of international law, and would amount to an abandonment of the time-honored United States position with reference to the freedom of the seas which has been zealously maintained since the early days of the republic.

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Mr. Chaney

Miss [illegible] (Chief Counsel's Office)

Please note & return.

I assume you are alert to this situation. Jess.

THE THREE-MILE LIMIT--II

By Lcdr. Emory C. Smith, U.S.N.

This is the second and concluding article treating the question of whether or not the 3-mile limit of territorial waters affords sufficient protection to the United States.

The first article appeared in the March 1949 issue of the JAG JOURNAL, and discussed the history of the 3-mile limit and its apparent exceptions. This article undertakes a discussion of the right of self-defense beyond the 3-mile limit.

A treatment of the analogous problem relating to the control of the air space reservations from the standpoint of national defense will appear in an early issue of the JAG JOURNAL.

Under the broad principle of self-defense, international law recognizes that any nation may take reasonable measures to protect its national security and right of privacy, even though the measures employed take place on the high seas beyond the 3--mile limit of territorial waters. It is important to note that a State may endeavor to prevent, in times of peace or war, the commission of certain acts by foreign ships, at a distance of more than three marine miles from its coast without claiming that the place where they occur is a part of its domain. This is true in the case of so--called hovering laws, designed to prevent smuggling by interference outside of territorial waters with foreign vessels about to enter them for an illegal purpose.

When such defensive measures of prevention are applied to foreign shipping, justification rests generally upon the causal connection between the acts sought to be thwarted and the injury otherwise to be anticipated from them by the aggrieved State within its own territory. As that connection may be found to exist at varying distances from the outer limits of territorial waters, the freedom of such a State is not, on principle, dependent upon the precise location of the spot where an offender may be apprehended, or upon the possession by the State of a special right of control over that spot.

Other instances of the applicability of the same principle occur when a neutral State seeks to check the commission of belligerent acts within dangerous proximity

of its shores although outside of the marginal sea; or when a belligerent power undertakes to establish a defensive area within waters outside of, but adjacent to, that sea. Such steps, although taken with a view to safeguarding the national domain, even when confined to specific areas, are not necessarily indicative of the breadth of the maritime belt belonging to the State that has recourse to them, or of assertions of sovereignty over the waters where they are applied.

Although without a sovereign, the high seas are, nevertheless, often the scene of activities in which a State asserts the right to check or forbid the commission of a particular act. Yet that assertion does not necessarily or commonly purport to be a manifestation of dominion over waters, or of a control over them, but rather an interference with acts sought to be committed thereon.

In a word, the 3-mile limit of the marginal sea will last only as long as that limit does not prevent a coastal State from doing whatever it may really need to do on the high sea for the maintenance and defense of its normal life. (See Hyde's International Law, vol. I, pp. 460-461.)

There have been numerous occasions on which our government has officially expressed its position with reference to the exercise of limited control on the high seas on the ground of self-defense. A noteworthy statement of this Government's position was made by Secretary of State Hughes in a letter to Senator Sterling on August 16, 1922, wherein the following appeared:

"It has been suggested that the seizure of vessels on the high seas for the purpose of preventing smuggling might be justified under the so--called right of self-preservation. This right on the part of a nation, says Mr. Hershey in his work on international law, includes 'the right to preserve the integrity and inviolability of its territory with the corresponding duty of respecting that of other states.' * * * In order to maintain that right a nation may, say the authorities, in extreme cases commit what would ordinarily be an infraction of the law of nations and violate the territorial sovereignty or the international right of another state. * * * Operations of this kind are described by Halleck as 'imperfect war.' From an examination of instances in which this principle of self-preservation has been invoked, it would appear that they are limited to efforts to thwart acts of a military character."

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Another expression of this Government's position is found in the Fur Seal Arbitration of 1893 with Great Britain when Mr. Phelps for the United States asserted the right of a nation to enforce its laws beyond the marginal sea, "if they are reasonable and necessary for the defense of a national interest or right." He stated that in such cases other States would acquiesce, but if they did not, the littoral State might enforce such laws at its discretion. To this Sir Charles Russell replied, that if the enforcement were reasonable other States would acquiesce, but that by international law such enforcement could not be claimed as a right against an objecting nation. There seems, however, to be some evidence of acquiescence in reasonable claims to warrant the assertion that a customary rule of international law has grown up under which such acts may be held legal if they meet the test of reasonableness.

The American position finds support among many of the authorities on the subject. The distinguished French writer, Fauchile, has written that "a state incontestably has the right to take all measures designed to guaranty its existence against the dangers which menace it." An English jurist of equal authority believes that "there are circumstances falling short of occasions upon which existence is immediately in question, in which through a sort of extension of the idea of self--preservation to include self-protection against serious hurt, States are allowed to disregard certain ordinary rules of law in the same manner as if their existence were involved." (Hall, International Law, 7th Ed., 1917, p. 278.)

Of interest in this same connection is the case of the Kearsarge. In 1864 the Confederate cruiser, Alabama, was in the harbor of Cherbourg, France. The Federal ship of war, Kearsarge, stood off the harbor entrance prepared to give battle. The French Government insisted that the engagement should take place far enough outside the 3-mile limit to obviate possible danger to the shore. Secretary of State Seward instructed Mr. Dayton, American Minister to France, "that the United States did not admit a right of France to interfere with their ships-of-war at any distance exceeding 3 miles." However, our Government reversed itself, and adopted the French view in 1886 when Secretary of State Bayard wrote to the Secretary of the Treasury as follows:

"And during our various fishery negotiations with Great Britain we have insisted that beyond the 3-mile line British territorial waters on the northeastern coast do not extend.

Such was our position in 1783, in 1794, in 1815, in 1818. Such is our position now in our pending controversy with Great Britain on this important issue. It is true that there are qualifications to this rule, but these qualifications do not affect its application to the fisheries. We do not, in asserting this claim, deny the free right of vessels of other nations to pass on peaceful errands through this zone, provided they do not, by loitering produce uneasiness on the shore or raise a suspicion of smuggling. Nor do we hereby waive the right of the sovereign of the shore to require that armed vessels, whose projectiles if used for practice or warfare, might strike the shore, should move beyond cannon range of the shore when engaged in artillery practice or in battle as was insisted on by the French Government at the time of the fight between the Kearsarge and the Alabama, in 1864, off the harbor of Cherbourg. We claim, also, that the sovereign of the shore has the right, on the principle of self-defense, to pursue and punish marauders on the sea to the very extent to which their guns would carry their shot, and that such sovereign has jurisdiction over crimes committed by them through such shot, although at the time of the shooting they were beyond 3 miles from shore."

These same principles have been recognized in American courts, the most renowned opinion being that handed down by the Supreme Court of Louisiana in the case of Cucullu v. Louisiana Insurance Company, 16 American Decisions 199 where it was held in part:

"Strictly speaking, the authority of a nation cannot extend beyond her own territory. By the common consent of nations this authority has been enlarged, where the sea is the boundary, to the distance of a cannon shot from the shore. Within these limits foreigners are protected, and prizes cannot rightfully be made of their vessels by enemies. But the right of the nation to protect itself from injury, by preventing its laws from being evaded, is not restrained to this boundary. It may watch its coasts and seize ships that are approaching it with an intention to violate its laws. It is not obliged to wait until the offense is consummated before it can act. It may guard against injury, as well as punish it. If indeed, in the exercise of this right, an unreasonable range was taken, other nations might object. But so long as it is confined to the seizure of vessels entering the port for which they were destined, it will not, it is presumed from a just ground of complaint. Our own legislation authorizes revenue

cutters to visit vessels four leagues from the coast; and the acts of Congress on this subject are a clear expression of the opinion of our government, that nothing in the law of nations prohibited them to confer such power on its cruisers."

This same rule finds support in the case of United States v. Bencouchea, C.C.A., 279 Fed. 537.

During recent years the most common method of exercising limited control over areas of the high seas contiguous to the territorial waters of a nation has been by the establishment of "zones" and "defensive sea areas." The President of the United States is authorized by statute to promulgate orders for the establishment of defensive sea areas for purposes of national defense. (18 U.S.C. 96.)

As shown above defensive sea areas, unlike war zones, are based upon the right of a State to exercise jurisdiction for specific purposes, such as defense, revenue, etc., over waters adjacent to its coast. These areas are, consequently, established near the home shore instead of near the shores of other nations. Only two nations, acting individually, the United States and Japan, have employed defense areas. However, the twenty--one American Republics approved on October 3, 1939, the Declaration of Panama. This defined a zone of waters extending approximately 300 miles to seaward around the North and South American continents, excluding Canada, for the purpose of self-protection. It prohibited the commission of hostile acts by any non-American belligerent nation within the zone. As yet, the right of establishing such defense areas has not been questioned. On April 5, 1917, President Wilson established 29 defensive sea areas; 1 other was established later. On December 11, 1941, President Roosevelt established 8 defensive sea areas, and by the end of 1943 well over 40 defensive sea areas had been established. The greatest extension beyond the 3--mile limit for defensive purposes was in the southeastern Alaska Maritime Control Area where the area extended about 53 miles beyond the 3-mile limit.

It is believed pertinent to observe here that in practice the President of the United States has established defensive sea areas only in wartime or during national emergencies. However, he is not limited by provisions of the statute and may, therefore, establish defensive sea areas in peacetime as well as in wartime. In view of the

proposition that a State may take reasonable steps to protect its security on the high seas contiguous to its territorial waters, it is concluded as a matter of international law that such steps may be taken in time of peace without the establishment of a defensive sea area covering such waters. However, the test of reasonableness must always be met to justify any measure taken to protect the security of our nation.

Two questions must be answered before any measures may be taken on the high seas in the interest of national security. The first question to be decided is, "What constitutes a threat to the national security?" Secondly, once it is decided that the nation's security is threatened, "What measures can we take to thwart such a threat?" While certain examples can be given to illustrate the problems, no hard and fast rule can be set down as applying to all situations. International law merely recognizes that there must be a threat to the national security and the measures taken to repel the threat must be reasonable.

A noteworthy peacetime example is found in President Roosevelt's "Freedom of the Seas" fireside chat of September 11, 1941. At the time of this address the United States was a nation constructively at peace with all other nations, although in a state of unlimited emergency (55 Stat. 1647). However, the German Government was responsible for the sinking of various American ships. Among other statements in the address, President Roosevelt declared, "Their (German submarines) very presence in any waters which America deems vital to its defense constitutes an attack." In another place the President stated, "* * * when you see a rattlesnake poised to strike, you do not wait until he has struck before you crush him." Mr. Roosevelt continued by stating, "This situation is not new. The second President of the United States, John Adams, ordered the United States Navy to clean out European privateers and European ships of war which were infesting the Caribbean and South American waters, destroying American commerce. The third President of the United States, Thomas Jefferson, ordered the United States Navy to end the attacks being made upon American and other ships by the corsairs of the nations of North Africa. * * * It is no act of war on our part when we decide to protect the seas that are vital to American defense. The aggression is not ours. Ours is solely defense. * * * From now on, if German or Italian vessels of war enter the waters the protection of which is necessary for American defense, they do so at their own peril."

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At the time of the President's speech, our ships were actually being sunk on the high seas--the same situation that existed during the time of Adams and Jefferson. Thus we have the so--called threat to our national security. The step taken to repel this "threat" was a "sink on sight order." Such step was not considered unreasonable at the time due to the conflagration existing in Europe, our state of unlimited national emergency, and the violent acts committed against our shipping.

The case of the Kearsarge and Alabama related above is another example illustrating the point that reasonable steps may be taken on the high seas to protect the national security of a nation. Eventually, a French vessel of war escorted the Confederate vessel, Alabama, out of the French port to an area a few miles beyond the 3-mile limit, to engage the Kearsarge. In this instance the threat to the national security of France lay in the possibility of damage to shore installations which a naval battle just outside the 3-mile limit might cause. The measure taken, of escorting the Alabama to a position outside cannon range of the shore, even though it was well outside the territorial waters of France, was considered a reasonable measure under international law.

Even merchant vessels hovering off our coasts just outside the 3-mile limit have been considered sufficiently inimical to our national interests to warrant the passage of the Hovering Vessel Act, which provides:

"The term 'hovering vessel' means any vessel which is found or kept off the coast of the United States within or <u>without</u> the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue" (46 Stat. 708). (Italics supplied.)

By the provisions of this Act certain tests are laid down to determine whether or not such a vessel constitutes a threat to our national interest. The elements considered are the history, conduct, character and location of the vessel. Note, too, that the test of "reasonableness" is employed. Measures taken in such cases include seizure of the vessel and criminal prosecution of the ones responsible for the forbidden actions. It is obvious, however, that

the actions of a foreign vessel of war would have to be particularly flagrant to warrant, as a reasonable step, a visit and search of the offending vessel, or more extreme measures in time of peace.

From the discussions in both articles it is concluded that since international law permits a nation to employ reasonable defensive measures beyond the limits of its territorial waters, the 3-mile limit is not outmoded as a rule of international law by the development of weapons of modern warfare.

From the JAG JOURNAL, March 1949, pp. 4--7, and April 1949, pp. 4-7.

Director, FWS, Washington, D.C. December 11, 1952

Regional Director, FWS, Juneau, Alaska

Determination of Seaward Boundaries of Alaska

In wire of even date we called your attention to the hearings of the Eagle Subcommittee scheduled for next week as part of its investigation and study to determine the proper criteria for fixing the seaward boundaries of the United States and the Territory of Alaska. This investigation was authorized by H.R. 676 introduced by Congressman Yorty. It occurred to us that persons in the Washington office might consider it worthwhile to look in on this hearing for the purpose of deciding upon the propriety of introducing testimony relative to problems of Alaska fishery conservation in extra-territorial waters. Questions on this subject recur with increasing frequency, and several recent incidents have been threatened, although they never actually materialized. Branch of Alaska Fisheries is familiar with the contention of some operators of mobile gear, especially trawlers, that no observance of the commercial fishery regulations is required outside the three-mile limit.

Latest correspondence with the Central office on this subject is Seton Thompson's memorandum of May 1, 1952, in which he states the opinion that the commercial fishing regulations may be applied only within territorial waters, which he interprets as extending for a distance of three miles offshore. Enclosed are two copies of an article entitled, "The Three-Mile Limit," by Lcdr. Emory C. Smith, U.S. Navy, which appeared in the JAG JOURNAL, a publication devoted to legal matters and Judge Advocate General decisions of interest to the military. Principal emphasis of Commander Smith's article is between the absolute sovereignty which a State may maintain over waters within three miles of its coast as contrasted to jurisdiction or control, which may be exercised over more extended but contiguous areas of peculiar interest to the state, such as its fisheries. The Hague decision in the recent fishery controversy between England and Norway accepts the premise that a nation may exercise control in specific matters which within the bounds of reasonableness are peculiar to its own welfare and interest. It is our hope that the gradual evolution of State Department policy and international law will eventually establish the authority of the United States to protect and manage domestic stocks of fish which range beyond the narrow confines of territorial waters.

Authority over the high seas salmon fishery will probably be achieved through the workings of the Japan-Canada-United States North Pacific Fishery Treaty, which should surely provide that the signatory nations may control their own nationals anywhere within the treaty area.

In the meantime, however, it may be well worth while to keep track of the Eagle Subcommittee activities and to make sure that the record of its proceedings takes full cognizance of fishery protection problems in the North Pacific and the Bering Sea.

CLARENCE J. RHODE
Regional Director

Attachment

THE THREE-MILE LIMIT--I

By Lcdr. Percy C. Smith, U.S.N.

The development of weapons of modern warfare has caused many students of international affairs to wonder whether or not the 3-mile limit of territorial waters affords sufficient protection to the United States.

This is the first of two articles discussing a brief history of the 3-mile limit, and what appear to be exceptions to the American doctrine which recognizes the 3-mile limit as a rule of international law. The second article, which will appear in an early issue of the JAG JOURNAL, will discuss the right of self-defense beyond the 3-mile limit as well as recent developments pertaining to the control of the air space reservations.

Few topics have provoked more controversy or elicited more divergent views and opinions than that of the extent of territorial waters. The practice of nations viewed over a period of 200 years ranges from one extreme to the other. It is possible to take any of several positions relative to the extent of a territorial sea or relative to the nature of the jurisdiction therein, and to support each by the authority of text writers and numerous illustrations drawn from international events, ancient and modern. It is felt that the greater part of the disagreement as to the extent of territorial waters is basically due to the concept of jurisdiction. Having recognized this reason for the disagreement we may make a useful distinction between claims to territorial waters and claims of jurisdiction or control upon the high seas, to explain the apparent disagreements pertaining to the question.

This idea is corroborated by Prof. Hyde in his treatise on International Law, who states in substance that there is a real distinction between a right of sovereignty over a particular area and a right to exercise a preventive or protective jurisdiction over or within an area that is outside of the national domain. This basic distinction between sovereignty and preventive or protective jurisdiction must be kept firmly in mind in order to rationalize the varying degrees of authority which a nation may exercise over the sea.

To discuss at any length the 3-mile limit would be an academic, time-consuming and unnecessary discourse. Suffice

it to say, however, that there exists a preponderance of opinion among the authorities that the 3-mile limit for the marginal sea stands today as a rule of international law. Furthermore, the authorities are practically unanimous in the opinion that within 3 miles of the coast a State may, under international law, exercise any jurisdiction and do any act which it may lawfully do upon its own land territory. In short, a State has sovereignty over waters lying within 3 miles of its coast. While there are some nations which claim jurisdiction over waters more than 3 miles from its coast, the United States has long been a champion of the 3-mile limit.

The first view of our Government as to the territorial limits at sea seems to have been made in a report of a congressional committee, submitted on January 8, 1782 relative to the right of American fishermen to ply their trade, particularly off the Newfoundland banks, to the effect that our Nation did not claim the right of fishing within three leagues of the British shores. On November 8, 1793, Secretary of State Jefferson informed the British and French ministers that "the ultimate extent" of the marginal sea was reserved "for further deliberations." However, Mr. Jefferson went on to state that the President had instructed American officials to restrain the enforcement of their orders "for the present to the distance of one sea league or three geographical miles from the sea shores." This measure was adopted by Congress in the following year when it gave the district courts "cognizance of complaints, by whomsoever instituted, in the cases of captures made within the waters of the United States or within a marine league of the coasts or shores thereof" (sec. 6, Act of June 5, 1794, 1 Stat. 384).

From time to time the United States has reasserted its adherence to the 3-mile limit in various diplomatic notes, court opinions, and by its actions. The Navy War Code of 1900, Art. 11, declares: "The territorial waters of a State extend seaward to the distance of a marine league from the lowest water mark of its coast line." And finally, the United States Supreme Court seems to fix American jurisprudence in support of the 3-mile limit in the case of Cunard S.S. Co. et al. v. Mellon (43 S. Ct. 504 (1923)).

While the United States has for nearly 150 years recognized the 3-mile limit and has followed the doctrine of "freedom of the seas," there are notable exceptions which, at first blush, would indicate an inconsistency of position. However, it is reiterated for the sake of emphasis that the rule of international law which recognizes the 3-mile limit as the boundary of that part of the sea which constitutes part of the territory of the littoral State is not inconsistent with the claim to a more extended control on the high seas. As a matter of further emphasis, it is pointed out that the 3-mile zone is in reality "a territorial" sea, coming fully under the domain or sovereignty of the adjoining State.

Perhaps the first apparent departure which our country took from the 3--mile limit principle was when it followed the British lead by passing the Act of March 2, 1799. The Act provided that every ship "bound to any port or place in the United States" might be boarded within four leagues of the American coast, examined, searched, and compelled to show a manifest. It is to be noted that the law had application only to ships which were bound to the United States. The principle of the Act of March 2, 1799, was incidentally considered by the Supreme Court in several cases. The first of these cases was that of Church v. Hubbart, (1804), 2 Cranch 187, in which Chief Justice Marshall, speaking for a unanimous court ruled that a nation might lawfully take steps upon the high seas to protect itself and secure its laws from violation, provided the measures employed satisfy the test of reasonableness.

The Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848 represents another apparent departure from the 3--mile limit principle. The British protest to Art. V of the treaty on the grounds that it extended the 3-mile limit was satisfied when our Government informed the British Government that the treaty only affected the United States and Mexico, and in no way infringed on the rights, under international law, of any other nation.

Another seeming inconsistency in the position of the United States with reference to the 3-mile limit principle occurred during the years 1886-89 in the seizure of certain British sealing schooners in the Bering Sea by U.S. revenue cutters against which the British Government protested.

The matter was settled by arbitration on February 29, 1892. The arbitrators decided that the United States had no right of protection or property in fur seals frequenting the islands of the United States in the Bering Sea when such seals were found outside the ordinary 3-mile-limit. A later treaty, however, was entered into between the United States, Great Britain, Russia, and Japan which prohibited the contracting powers from engaging in sealing in the open seas of the North Pacific Ocean within certain defined areas.

Perhaps the most notable of all "inconsistencies" of this Government with reference to the principle of the 3--mile limit occurred in 1922 when the United States and Great Britain entered into a treaty designed to permit the former to effectively combat the liquor smuggling industry outside the 3-mile limit off the coast of the United States.

As late as December 11, 1941, the President of the United States, by Executive Order, defined for purposes of international defense "defensive sea areas" which extended outside the territorial waters of the United States.

In all of these apparent inconsistencies, it can be seen that the United States was in no way attempting to exercise the same incidents of sovereignty over the high seas which it exercises with respect to its territorial waters within the 3-mile limit. The purpose in each case was limited and specific, and involved only the exercise of a control--in contradistinction to the exercise of a sovereignty--over the waters contiguous to the boundary of the 3--mile limit. In the four instances cited above, the United States has exercised a control outside the 3--mile limit for the purpose of regulating fishing, for enforcement of customs laws and for purposes of self-defense. In every instance set out above, this exercise of control outside the 3--mile limit for the purposes enumerated has been pursuant to treaty with other powers with one notable exception, and that, for the purpose of self-defense.

In addition to the above there have occurred within the past 3 years still other apparent inconsistencies in the United States position with respect to the 3-mile limit. On September 28, 1945, the President of the United States issued two proclamations, the first of which, Proclamation No. 2667, declared as a matter of policy that the natural resources of the subsoil and sea bed of the continental

shelf appertain to the United States, subject to its jurisdiction and control. Simultaneously the President of the United States issued Proclamation No. 2668, which asserted the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States, either unilaterally or in concert with other interested States; the character of the waters as high seas and the right to free navigation were declared to remain unaffected.

The concept of asserting jurisdiction over the subsoil and sea bed of the continental shelf, while not new, is of comparatively recent inception. As early as 1916 a Spanish expert, concerned over the depletion of fisheries, urged that territorial waters be extended to include the whole continental shelf, where the important food species chiefly flourished. Similar recognition of the importance of the shelf with respect to fisheries was being voiced simultaneously by Argentine writers who emphasized the need for adequate control. This concern was reiterated some years later in the League of Nations Committee of Experts for the Progressive Codification of International Law.

In quite another connection, the year 1916 also saw the assertion by the Russian Imperial Government of a claim to certain uninhabited islands north of Siberia on the ground that they formed "the northern constitution of the Siberian continental shelf"--an assertion repeated by the Soviet Government in 1924. Also of significance as a precedent, although it did not refer in terms to the the continental shelf, was the treaty of February 26, 1942, between Venezuela and the United Kingdom, undertaking to dispose of the submarine areas of the Gulf of Paria. By the agreement each State undertook to recognize "any rights of sovereignty or control which have been or may hereafter be lawfully acquired" by the other over submarine areas on their respective sides of an arbitrary boundary line. "Submarine areas" were defined as "the sea bed and the subsoil outside of the territorial waters of the High Contracting Parties."

Soon after the proclamation of the President of the United States asserting jurisdiction and control over the continental shelf adjacent to the United States, several Latin American countries asserted sovereignty over the continental shelf contiguous to their land areas. Among these nations were Mexico, Argentina, Peru, Costa Rica, and Cuba. Costa Rica put forth a claim to the continental shelf on both Atlantic and Pacific coasts of Costa Rica, out to a limit of 200 miles offshore regardless of the depth of water.

As to the proclamation of the President of the United States (No. 2667), no claim on behalf of our country to "sovereignty," "title," or "ownership" of the continental shelf was asserted. However, a summary of the actions of the Latin American States indicates that, while all have relied for support on the United States proclamation of 1945, they have gone considerably beyond their prototype in at least two respects: (1) they undertake to effect a categorical extension of sovereignty over the continental shelf and sea bed; and (2) they propound a further claim to the waters which cover the continental shelf.

It is noted in the Proclamation of the President of the United States (No. 2668) asserting the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States no reference was made to the continental shelf. The claim proceeded on a general theory of the right of a coastal State to protect its contiguous fisheries; the zone concept doubtless was derived from the customs enforcement areas authorized by the Anti-Smuggling Act of August 5, 1935 (49 Stat. 518). However, the Latin American States have sought in their actions to achieve both objectives through a single comprehensive claim to the continental shelf and to the waters over it.

This assertion of sovereignty by the Latin American countries goes beyond anything put forward in either of the United States proclamations. It presumably implies, for example, sovereignty in the air space over the claimed areas--a question of the first importance, for, as will be shown in the succeeding article, there is no right of innocent passage by air. Even on the surface, though rights of free navigation be recognized in such a claim, there is in the claim itself an infringement, in principle at least, of traditional views on the character of the high seas.

The foregoing has sought to give a résumé of the exceptions or apparent inconsistencies of the American position with reference to the 3-mile limit. In view of the present American position it is concluded that there can be no legal extension of the territorial waters of the United States or its possessions beyond the 3-mile limit. To make any unilateral extension of the territorial waters of the United States would be, in effect, to pursue a course directly contrary to the preponderance of international law, and would amount to an abandonment of the time-honored United States position with reference to the freedom of the seas which has been zealously maintained since the early days of the Republic.

Director, FWS, Washington, D.C. December 16, 1952

Regional Director, FWS, Juneau, Alaska

High seas fishery jurisdiction

In response to Dr. Kask's memorandum on above subject I am attaching copy of my original inquiry dated March 31 and Mr. Thompson's answer of May 1, 1952. Until today I had not seen this answer since I was away from headquarters when it arrived.

The question still needs some attention, however. Last week we forwarded some additional material bearing on the subject. The meetings in Seattle brought up the point of jurisdiction over the trawl fishery in the Bering Sea. This has importance from the standpoint of Japanese Treaty conditions relating to application of conservation regulations. If we have no jurisdiction beyond the three mile limit our trawl regulation is of no effect and we cannot be said to have had the fishery under conservation provisions. In view of Treaty provisions we are wondering if regulation of the bottom fishery adjacent to Alaskan shores should be contemplated at an early date.

Mr. Thompson mentioned Cook Inlet as an undetermined area with regard to its status as Territorial waters. Halibut fishing is carried on under treaty in what we call the lower Inlet. That would make a case for its exclusion from Territorial waters but we must govern drift gill net salmon operations or lose control completely. When the question arose last year off the Copper river and Prince William Sound areas I arbitrarily advised we considered waters inside of a line from Cape St. Elias to the western entrance of Prince William Sound as Territorial waters. This was not challenged at the time but I presume will be as the competition for the fishery continues.

I would like to see some official declarations made on a number of areas, including Bristol Bay, and so state in our regulations that jurisdiction is claimed. Canada, and other countries, have taken a stronger stand. "Grandfather" rights may be at stake in addition to the problem which will arise when our own nationals decide to stake off three miles and thumb their noses at all fishing regulations. There is already the question of quotas or closed seasons on the herring and crab fishery often conducted offshore.

CLARENCE J. RHODE

Enclosure

Office Memorandum • UNITED STATES GOVERNMENT

TO : Assistant Director Kask DATE: February 20, 1953

FROM : Chief Counsel

SUBJECT: High seas fishery jurisdiction

Some time ago you referred for my consideration a file relating to the regulation of fishing in the territorial waters of Alaska. In lieu of making an immediate reply either to your office or the Regional Office at Juneau, it was decided to discuss the problem with Regional Director Rhode during the Regional Directors' Conference. While that discussion was not extensive, it is believed that most of the questions presented by Mr. Rhode were answered.

Since then, the question of the position of the United States regarding the exercise of jurisdiction beyond the three-mile limit has been considered in connection with other matters. It probably is necessary to point out now only that any attempted extension of jurisdiction by the United States is fraught with considerable danger insofar as international repercussions are concerned. It also may be noted that any such extensions seem to be frowned upon by the fishing industry and administrators alike.

This memorandum is simply to close the file for the time being.

Donald J. Cheney

Donald J. Cheney

BEST COPY AVAILABLE

569-731 O - 75 - 13

PX 77

Enforcement Agent Larsen, FWS, Anchorage
Enforcement Agent Roberds, FWS, Cordova
Law Enforcement Supervisor, FWS, Juneau

May 8, 1953

Attached confidential memo re Cook Inlet

Enclosed for your information and guidance is a copy of a confidential memo from Director Day in answer to an inquiry from the Regional Office dealing with our Enforcement authority beyond the three-mile limit.

As the Director points out, this is a legal question and the Chief Counsel's opinion which the Director quotes will be the policy which we will follow. I am not in complete agreement with Counsel regarding Cook Inlet, as it is my opinion that this Inlet is and has been historically claimed as Territorial waters. However, this has no bearing on the present issue and is merely brought out in the hope that you will be able to collect evidence which would bear out my point.

Although Counsel's opinion deals only with Cook Inlet, the same situation could be encountered in Prince William Sound, in which case it should be handled in accordance with Counsel opinion of Cook Inlet Enforcement.

This matter must be treated as confidential within the Service and under no conditions publicized to the general public

DAN H. RALSTON

DHRalston:bb

Office Memorandum • UNITED STATES GOVERNMENT

-Confidential-

TO : Regional Director, Juneau, Alaska DATE: April 28, 1953

FROM : The Director

SUBJECT: Your memorandum of April 3.

I can understand your preoccupation with regard to action to be taken by your enforcement officers if United States or foreign vessels fish in violation of our regulations in extra-territorial waters (i.e., beyond three miles) of Cook Inlet or Bristol Bay. As this is largely a legal problem, I have referred it to our Chief Counsel. The following is a quotation from his opinion:

> "To the best of my knowledge, Cook Inlet has not been claimed as a historical bay and, thus, it would seem unwise to take any action against foreign vessels fishing beyond the territorial waters of Alaska, i.e., 3 miles. This is particularly true in view of the numerous claims and counterclaims which have been made by the United States and countries to the south regarding the extent of territorial jurisdiction. With respect to United States vessels, I am inclined to feel that we should attempt to regulate their fishing operations in Cook Inlet and similar areas. While the Alaska Commercial Fishery Acts refer only to territorial waters, the basis of their application to citizens may be quite different from that involved in their application to foreign vessels. It is doubted that the reference was intended to be strictly construed. In any event, one of the means by which a historic bay status may be established is to claim jurisdiction at least over the citizens of this country in such waters."

I concur with this opinion and you are directed to act accordingly.

(SGD.)

Albert M. Day
Director

COPY

PX 78A

Wm. C. Todd — 1943

NAME OF BOAT — CAPTAIN — TRIP NO.

DATE	NAME OF PLACE	COMPASS	DIST.	NO. SKATES	CATCH			
7/4	Wallace Reef	C	40	35	3000	27		
7/5	Running for Pollock Bnk			10	500	1		
7/6	Pollock Bnk			46	500	26		
7/7	Eagle Pnt			48	4000	1		
7/8	"			52	5000			
7/9	Chirgoch Isl	E	2.5	16	2500	2600		
7/10	"	"	4	54	9000	1		
7/11	"	"	3	36	3500			
7/12	"	"	3	47	3500			
7/13	Gore Pt		3	36	3500	26		
7/14	"		"	57	2000	1		
7/15	Pollock Bnk			15	1500			
7/16	Alysanoe Bank		65	60	4000			
					(1) 15 - 3500		L	X
					(2) 2.5 - 25500		A	/
					(3) 123 - 21000		C	/

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel Wm. C. TODD is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF JANUARY, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

Kaare II — 1943

NAME OF BOAT — CAPTAIN — TRIP NO.

DATE	NAME OF PLACE	COMPASS	DIST.	NO. SKATES	CATCH				
June 3	L. Van								1.30
4	L Ketch								
13	SE Pollock	25		48	5-75-5	*			
14	"			3-5	6635				
15	Pollock Bank	"		28	2345	32	305	37,596	X
16	"			28	1134				
17	Cook Inlet	260			177				
18	Pollock	25		34	7458				
19	"	"		44	6880				
20	"	"		36	5036				
21	"	"		36	4904				
26	P Rup. List 25								

* The odd amounts are due to the fact that the estimates made by the boat's officers will have to be changed after the boat is checked in.

Say 2 chinook 70 # the rest 15 #.

L. ✓ A. — C. KKK

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel KAARE II is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF JANUARY, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

Northern Dawn (8791)	1961	Date Copied	Bait	No. Men	No. Grades	Gnd Line Wt	Gnd Line Kind	Ganging Wt	Ganging Kind	Rig	No. Lines	Size of Hook	No. Hooks per Skate	Factor 132
Captain John [illegible]	Trip No. 6/26			8	64	28	Ny.	–	Ny.	13	6	6	155-[illegible]	Inventory
Address			25				4	00	4			3	158	Checked

Date	Name of Place 5	Day	Area	Skates	Catch	Reason Code
6/9	Cape Hukchak 3-6 mi E [illegible] 120-132 fms	1	271	48	20,000	
10		2		48	7,000	
11		3		32	6,000	
12	Cooks Inlet (3-4 mi E Cape Douglas) 92	4	272	31	4,000	
13		5		39	3,000	
14		6		47	9,000	
15		7		46	10,000	
16		8		58	8,000	
17	Cape Upper	9	281	37	4,000	
18		10		47	7,000	
19	Barren Is. 3 mi SW	11	261	37	20,000	
20		12		55	25,000	
21		13		61	27,000	
22-25	Running to Prince Rupert					
26	Sold in Prince Rupert to Co-op.			586	150000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

Northern Dawn	1961	Date Copied	Bait	No. Men	No. Grades	Gnd Line Wt	Gnd Line Kind	Ganging Wt	Ganging Kind	Rig	No. Lines	Size of Hook	No. Hooks per Skate	Factor 132
Captain	Trip No. 7/24													Inventory
Address	2		28											Checked

Date	Name of Place 5	Day	Area	Skates	Catch	Reason Code
7/9	BARREN I SW 3M 72 F	1	261	46	36000	
10		2		18	10000	
11		3		50	18000	
12		4		40	24000	
13	HARBOUR DAY (EDDIAK)	5				15
14	BARREN I SW 3M 72 F	6		29	12000	
15		7		28	14000	
16		8		27	7000	
17		9		30	14000	
18		10		48	14000	
19		11		49	6000	
20-23	RUNNING TO [illegible]					
24	SOLD IN [illegible] TO [illegible]			360	155000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

(8373) LINDA — 1972 — DATE COPIED 8/9 — PATTON 95

CAPTAIN S. TOSTAD — TRIP NO. 3 — DRAFT 28

ADDRESS 3149 N 34th Ave. Seattle, Wash.

DATE	NAME OF PLACE 13	DAY	AREA	SKATES	CATCH	REASON CODE
6/20	COPE DOUGLAS 6 MILES OFF	1	271	4/8	5,000	
21	"	2		4/8	4,000	
22	BIRAL ISLAND	3	261	4/8	4,000	
23	"	4		4/8	3,000	
24	RUNNING	5				15
25	TRINITY	6	290	4/8	4,000	
26	RUNNING	7				14
27	6 MILES NW LIGHTHOUSE ROCK	8	300	54	7,000	
28	" " "	9		63	8,000	
29	" " "	10		63	8,000	
30	" " "	11		63	7,000	
7/1	" " "	12		54	6,000	
2	" " "	13		45	5,000	
3	RUNNING	14				14

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel LINDA is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

(8791) NORTHERN DAWN — 1972 — DATE COPIED 7/17 — PATTON 100

CAPTAIN — TRIP NO. 4 — DRAFT 28

ADDRESS

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
Jun 27	FAIRWEATHER GNDS 4 mls S. DRY BAY 120	1	190	70	3,000	
28	20 mls S. BLACK SAND IS.	2		70	4,000	
29	RUNNING	3		-	-	14
30	↓	4		-	-	14
Jy 1	5 mls E BARREN IS	5	260	81	13,000	
2	↓ ↓	6		72	10,000	
3	6 mls W. FLAT IS. - COOKS INLET	7	261	72	10,000	
4	↓ ↓ ↓	8		80	12,000	
5	↓ ↓ ↓	9		60	10,000	
6	5 mls E CHUGACH IS.	10	260	79	10,000	
7	↓ ↓	11		74	6,000	
8	5 mls S. PYE IS.	12	250	66	7,000	
9	↓ ↓	13		71	8,000	
10	↓ ↓	14		71	7,000	
11	↓ ↓	15		70	7,000	
12	↓ ↓	16		99	7,000	
13	Anvert			1015	114000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

(7816) 47 10

FREELAND

Captain	Boat	Trip No.	Date Copied	Bait	No. Men	No. Boated	Gnd Line Wt	Gnd Line Kind	Ganging Wt	Ganging Kind	Rig	No. Lines	Size of Hook	No. Hooks per Skate	Factor
Dave Sutoul		70													75
Address: Suite 101 - 2090 West	Vancouver	1	8/14	25	7	36	28	N	72	N	10	6	6283	100	Inventory ✓
						36	1	3		3	2	1	3	80	Checked

Date	Name of Place 5	Day	Area	Skates	Catch	Reason Code			
4/28	Seward Gully	1	250	56	6000				
29	↓	2		64	6000				
30	NE Corner Portlock	3		64	3000				
5/1	↓	4		32	2500				
2	Marmot	5	270	64	2500				
3	↓	6		64	3000				
4	Into Kodiak for fuel	7				12			
5	Shelikof (upper!)	8	271	64	5000				
6	NE Gale	9				2			
7	↓	10		40	3000				
8		11		64	3000				
9	set only	12				31			
10	Cook Inlet	13	261	64	5000		lost	1500 to	floss
11	↓	14		64	7000				
12		15		64	10000				
13		16		64	7000				4

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King.

(7372)

Brooks Bay

Captain	Boat	Trip No.	Date Copied	Bait	No. Men	No. Boated	Gnd Line Wt	Gnd Line Kind	Ganging Wt	Ganging Kind	Rig	No. Lines	Size of Hook	No. Hooks per Skate	Factor
Ivan Elingson		70	7/20												71
Address: 1018 Railway Av		3	Cod 3	00											Inventory ✓
															Checked

Date	Name of Place	Day	Area	Skates	Catch	Reason Code			
6/27	Richmond 3273 1541 3231 1514 75 F	1	260	40	14500				
28	3250 1534 3275 1516 30-75	2		40	5000				
29	Barren Isl., Sugarloaf Is.	3	261	50	6000				
30	3292 1650 3327 1675 90-145	4		60	3500				
7/1	3295 1137	5		40	4000				
				–	–				
2		6		–	–	15			
3	3295 1754 3300 1763	7	260	60	5700				
4	1579 3301 1810 3300 50-75	8		70	900	8			
5	No Fishing	9		–	–	15			
6	" "	10		–	–	15			
7	" "	11		–	–	15			
8	Two Headed Island 3071 1072	12	280	60	4000				
9	2994 1215 3010 1170 2993 1214 25-70 F	13		70	8300				
10	2990 1216 2995 1214	14		50	7000				
11	No Fishing	15				15			1

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King.

(7815)

FREELAND

Date	Name of Place	Day	Area	Skates	Catch	Reason Code
7/23	Cape Douglas	1	271	48	4500	
24	↓	2		44	4000	
25	Cook Inlet	3	261	64	8000	
26		4		64	7000	
27		5		64	6000	
28		6		64	4000	
29	bait	7				13
30	Low Cape	8	290	40	2000	
31	↓	9		64	4000	
8/1	running	10				14
2	Engine trouble - Lazy Bay	11				11
3		12				11
4		13				11
5	Trinity	14		42	1000	8
6	Chiniak	15	270	64	2000	8
				558	42500	
7	Sold Kodiak					

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King.

FREELAND

Date	Name of Place	Day	Area	Skates	Catch
5/14	Cook Inlet Due W. Flat Islet 3 mi	17	261	64	3000
15	↓	18	1	64	3500
				896	69,500
19	Sold Kodiak				

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

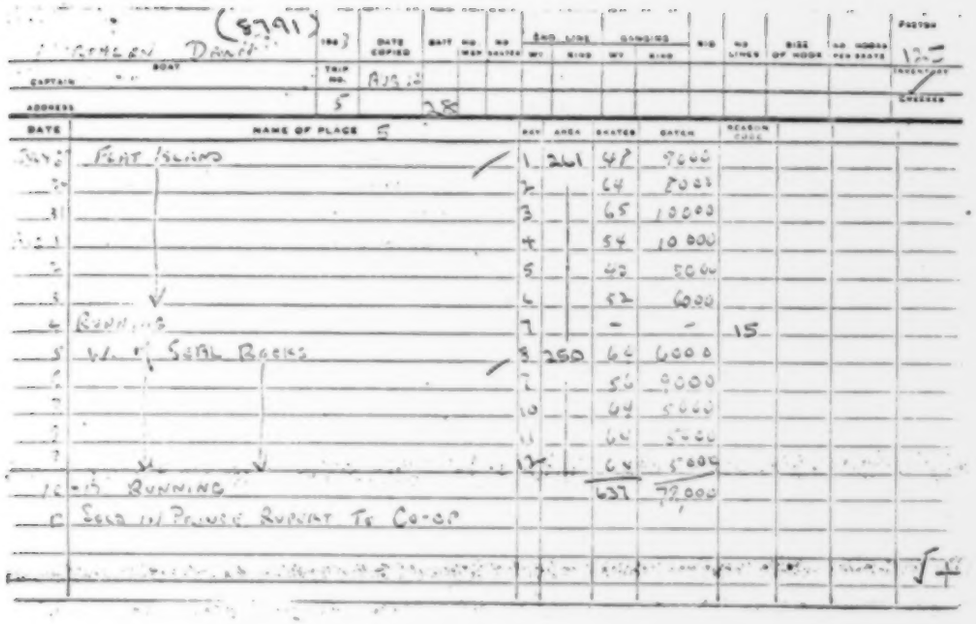
Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King.

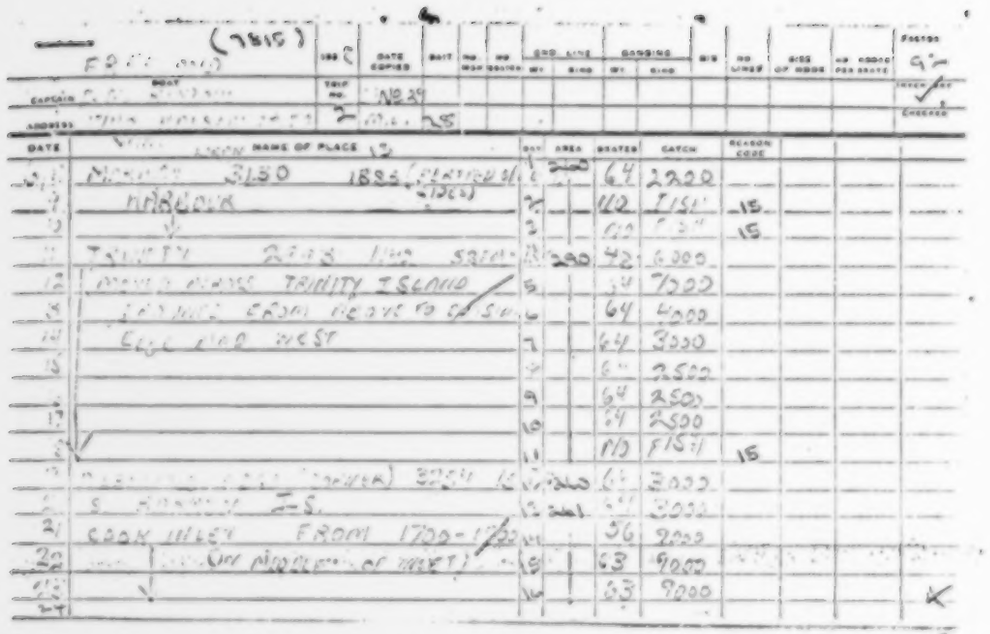


I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King



I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King

(7815)

Freeland (BOAT)

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
Jul 11	116-329S 117-252W	1	250	65	5000	
12		2		62	7000	
13	77 Fms	3		65	5000	Ins 99336
14	Anchor Point	4	261	62	5000	
15		5		62	3000	
16		6		69	6000	
17		7		63	6000	
18		8		63	4900	
19		9		62	5000	
20		10		62	5000	
21		11		62	5000	
22		12		62	5000	
23	No fish	13				15
24		14				15
25	NE Cosmos Portlock	15	260	61	1000	8
5/2	Seattle - SSE			921	62,100	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

(9723)

WESTERN CRUSADER (BOAT)

CAPTAIN C. M. HICKMAN TRIP NO. 31249

ADDRESS 4224 E 167th VAN WASH. 98

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
6/14	BARREN ISLAND	1	260	64	4000	
15		2		64	4000	
16		3		64	4000	
17	CAPE CHINIAK AND CHELIKOF	4	270	50	4000	
18	CAPE DOUGLAS	5	272	72	4000	
19		6		64	4000	
20		7		32	4000	
21	(LULL)	8		64	4000	
22		9		64	4000	
23	MARMOT ISLAND	10	270	NO	FISH	15
24		11		64	4000	
25	S.E. COPPER, PORTLOCK	12	250	NO	FISH	15
26		13		64	4000	
27	EDGE, DEEP HOLE (PORTLOCK)	14	260	62	4000	
28		15		49	4000	
29	MARMOT FLAT	16	270	18	2779	
7/4	RUPERT, 256 TO ATCH			929	50,000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel WESTERN CRUSADER is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

604-731 O - 73 - 14

(5791)

NORTHERN DAWN — BOAT — 1965 — TRIP NO. 5 — DATE COPIED Sept 23 — FACTOR 100

CAPTAIN — ADDRESS

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
Aug 12	Pie Island 3 miles (E)	1	250	27	3,000	
13	↓	2		83	10,000	
14	↓	3		83	10,000	
15	↓	4		54	6,000	
16	Point Banks 3 Miles (E)	5	260	93	3,000	
17	↓	6		66	10,000	
18	↓	7		42	4,000	
19	Cook Inlet E of St Augustein Is	8	261	75	2,000	
20	Low Island	9	270	93	8,000	
21	Kukak Bay	10	271	25	5,000	
22	↓	11		53	9,000	
23	↓	12		85	4,000	
24	Hazard Bay	13	270	57	3,000	
25	↓	14		91	5,000	
26	↓	15		34	4,000	
27	Sold Kodiak Alaska Ice & Cold St.		901		87,000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

(5791)

NORTHERN DAWN — BOAT — 1966 — TRIP NO. 8/21 — DATE COPIED

CAPTAIN JOHN J DAHLSEN — ADDRESS 930, 14th Ave E, SUPERIOR 4

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
8/2	KUKAK BAY	1	271	44	6,000	
3	↓	2		72	7,000	
4	CAPE DOUGLAS	3		40	7,000	
5	↓	4		29	2,000	
6	↓	5		64	4,000	
7	BARREN ISLANDS South	6	261	60	4,000	
8	↓	7		59	5,000	
9	↓	8		71	5,000	
10	NORTH	9		64	16,000	
11	↓	10		56	10,000	
12	↓	11		58	10,000	
13	↓	12		49	7,000	
14	↓	13		75	12,000	
15	LAST DAY	14		69	7,000	
22	Superior			797	102,000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

SKARDALE (9331)

1959	DATE COPIED	BAIT	NO MGR	NO SKATES	GND LINE WT	GND LINE KIND	GANGING WT	GANGING KIND	RIG	NO LINES	SIZE OF HOOK	NO HOOKS PER SKATE	FACTOR	
TRIP NO.	7/20/57													
3	JT4/28													

CAPTAIN: BOAT

ADDRESS:

DATE	NAME OF PLACE 12	DAY	AREA	SKATES	CATCH	REASON CODE			
7/4	Cape Suckling	1	220	54	5000				
5	Ru[illegible]	2	1	—	—	14			
6	Cape Douglas	3	271	54	5000				
7	✓ ✓	4		54	5000				
8	✓ ✓	5		54	4000				
9	Barren Isl	6	261	27	3000				
10	Cape Cleare	7	240	54	5000				
11	✓ ✓	8		54	5000				
12	✓ ✓	9		54	5000				
13	✓ ✓	10		54	5000				
14	✓ ✓	11		54	5000				
15	✓ ✓	12		54	5000				
16	✓ ✓	13		54	2500				
17	✓ ✓	14		54	5000				
				675	65,000				
22	Pr Rupert Sold Atlin								

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel SKARDALE is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

NORTHERN DAWN (8791)

1959	DATE COPIED	BAIT	NO MGR	NO SKATES	GND LINE WT	GND LINE KIND	GANGING WT	GANGING KIND	RIG	NO LINES	SIZE OF HOOK	NO HOOKS PER SKATE	FACTOR	
TRIP NO.														
2		28												

CAPTAIN: George H. Olafson

ADDRESS: 65th Ave E, Rupert

DATE	NAME OF PLACE 5	DAY	AREA	SKATES	CATCH	REASON CODE			
6/9	Chuyak I 3 mi N	1	270	56	6000	No			
10	↓	2		68	4000		Other		
11	↓	3		96	10000			Species	
12	Marmot Is 10 mi E	4		72	7000				
13	↓ ↓	5		70	8000				
14	20 mi	6		64	10000				
15	10-20 mi	7		50	3000				
16	↓	8		47	2000				
17	↓ ↓	9		83	4000				
18	Cook Inlet entrance	10	261	56	3000				
19	↓	11		47	2000				
20	Sea Otter Is 12 mi	12	270	80	4000				
21	[illegible]	13		NO	FISH	15			
22	Nuksbak 4 mi E (56 sh) + Black Cape 3 mi (40 sh)	14	271	96	3000				
				885	66,000				
6/27	Rupert, Sold to Co-Op								

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

BEST COPY AVAILABLE

(7815)

FREELAND

CAPTAIN D.M. DINTOUL

ADDRESS 1312 ELM VAN. 12 2 WAB 25

DATE	NAME OF PLACE 5	BAY	AREA	SKATES	CATCH	REASON CODE
6/6	Cook Inlet Anchor Pt St			—	—	
7	1800 - 1700	1	261	45	6000	
8		2		42	4000	
9		3		48	4000	
10	Chinitna Pt	4		71	5000	
11	Chinitna Pt	5		56	4500	
12	" "	6		64	10000	
13	Chinitna Bay	7		64	8400	
14	Chinitna Bay → Waterfall	8		56	5500	
15	Seldovia for fuel + water	9		—	—	12
16	Waterfall to Oil Pt	10		63	7400	
17		11		32	2500	
18		12		63	3300	
19		13		48	4000	
				658	64,600	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

Northern Dawn

CAPTAIN J. Johnson

ADDRESS 430 4th Ave. West Rupert NE 28

DATE	NAME OF PLACE 13	BAY	AREA	SKATES	CATCH	REASON CODE		
6/21	Shelikoff Straits	1	291	80	8000		80	8000
22	Running	2		No Fish		14		
23	Halibut Bay	3	281	58	6000			
24	North of Halibut Bay	4		65	6000			
25	Rocky Point	5		84	10000			
26	Running	6		No Fish		14		
27	Point Banks	7	260	85	10000			
28	Cooks Inlet	8	261	64	8000		1238	137000
29		9		97	10000			
30		10		64	7000			
7/1		11		81	9000			
2		12		81	8000			
3		13		64	4000			
4	Chugach Inlet	14	260	63	8000			
5		15		81	9000			

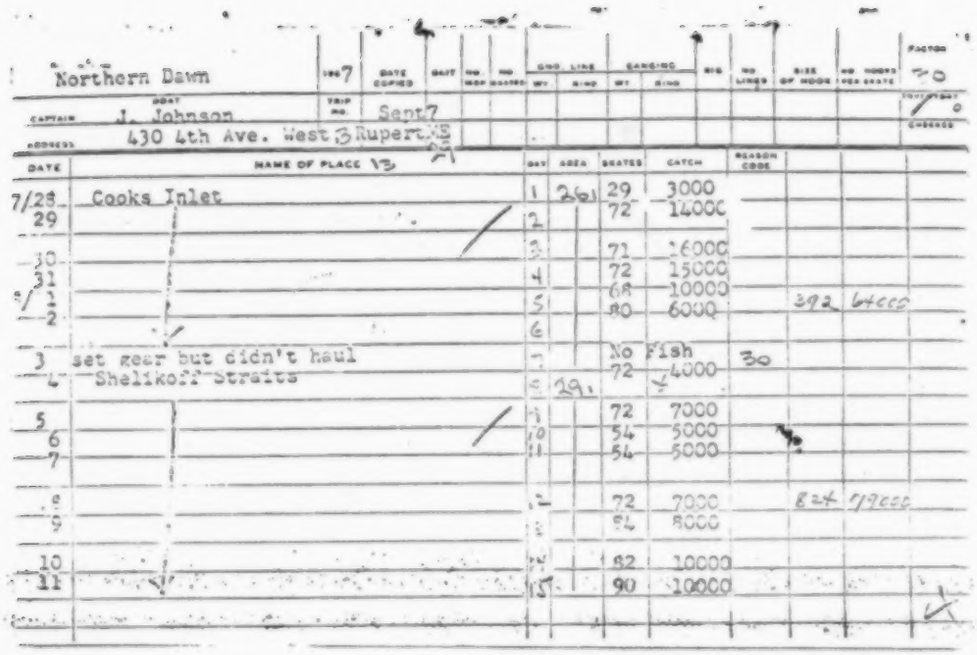
I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King



Northern Dawn — 1967 — DATE COPIED — GEAR — NO SKATES — LINE SIZE — HOOKS PER SKATE — FACTOR 7.0

CAPTAIN J. Johnson — TRIP NO. Sept 7 — INSPECTED ✓ 0

ADDRESS 430 4th Ave. West, Rupert, B.C. — CHECKED

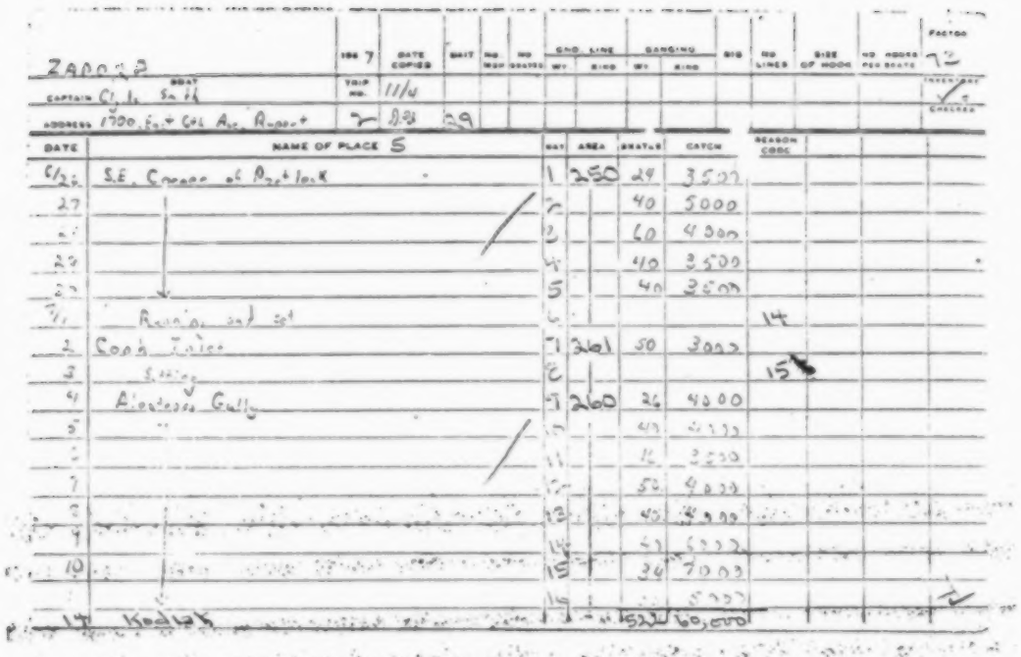
DATE	NAME OF PLACE 13	DAY	AREA	SKATES	CATCH	REASON CODE	SIZE OF HOOK	NO HOOKS PER SKATE
7/28	Cooks Inlet	1	261	29	3000			
29		2		72	14000			
30		3		71	16000			
31		4		72	15000			
8/1		5		68	10000			
2		6		80	6000		392	64000
3	set gear but didn't haul	7		No Fish		30		
4	Shelikoff Straits	8	291	72	4000			
5		9		72	7000			
6		10		54	5000			
7		11		54	5000			
8		12		72	7000		824	119000
9		13		54	8000			
10		14		82	10000			
11		15		90	10000			

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King



ZAPORA — 1967 — DATE COPIED 11/4 — GEAR — NO SKATES — LINE SIZE — HOOKS PER SKATE — FACTOR 7.2

CAPTAIN Clyde Smith — TRIP NO. 7 — INSPECTED ✓

ADDRESS 1700 5th Ave. Rupert — 1.23 — 29 — CHECKED

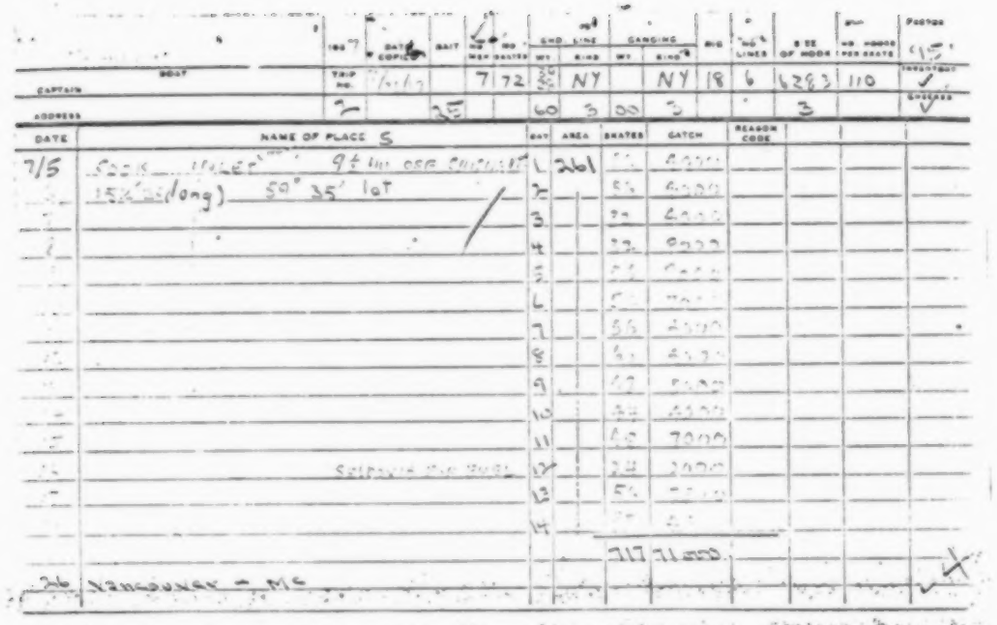
DATE	NAME OF PLACE 5	DAY	AREA	SKATES	CATCH	REASON CODE	SIZE OF HOOK	NO HOOKS PER SKATE
6/26	S.E. Cape of Baynes Island	1	250	29	3500			
27		2		40	5000			
28		3		60	4000			
29		4		40	3500			
30		5		40	2500			
7/1	Running out to	6				14		
2	Cook Inlet	7	261	50	3000			
3	Fishing	8				15		
4	Aleutian Gully	9	260	36	4000			
5		10		42	4200			
6		11		14	2200			
7		12		56	4800			
8		13		42	3900			
9		14		42	5200			
10		15		36	7000			
		16			5200			
17	Hooks	17		1522	60,000			

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel ZAPORA is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King



BOAT	19	DATE COPIED	BAIT	NO. MEN	NO. SKATES	GANGING LINE WT.	GANGING LINE KIND	GANGING WT.	GANGING KIND	RIG	NO. LINES	SIZE OF HOOK	NO. HOOKS PER SKATE	FACTOR
CAPTAIN	TRIP NO.	7/6/72		7	72	30	NY		NY	18	6	6283	110	INVENTORY ✓
ADDRESS	2		35			60	3 00		3			3		AREAS ✓

DATE	NAME OF PLACE S	DAY	AREA	SKATES	CATCH	REASON CODE			
7/5	Sooke Inlet 9½ mi ESE Sooke	1	261	6	6000				
	15½ mi (long) 50° 35' 10"	2		5½	6000				
		3		5½	6000				
		4		5½	6000				
		5		5	5000				
		6		5½	6000				
		7		5½	2000				
		8		5½	2000				
		9		12	5000				
		10		5½	6000				
		11		6½	7000				
	Sailing time home	12		2½	2000				
		13		5½	[illegible]				
		14		[illegible]	[illegible]				
				717	71,500				
26	Vancouver - MC								

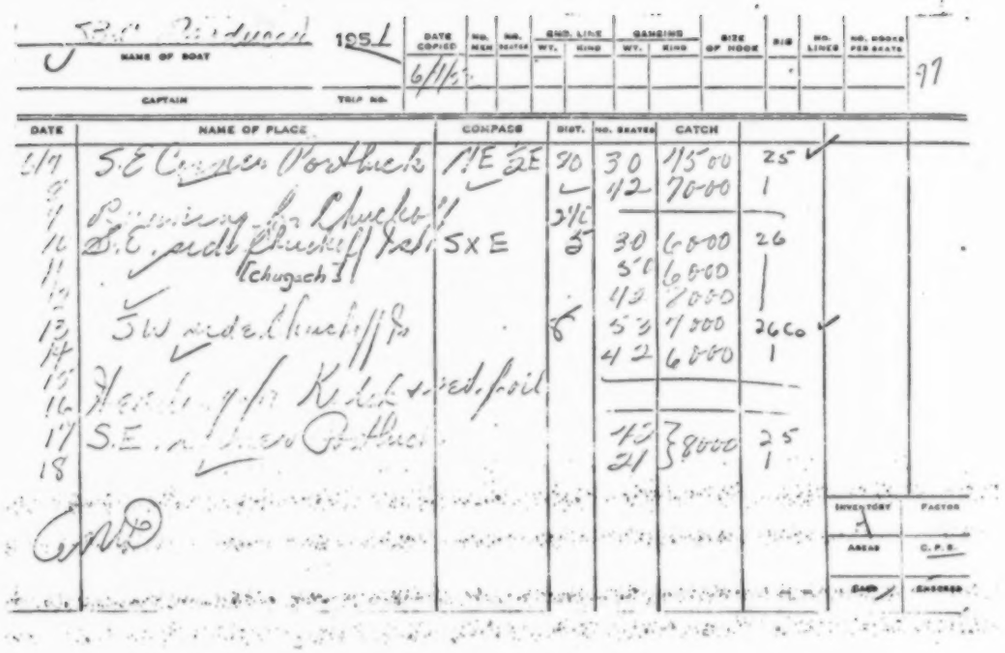
I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King



NAME OF BOAT	19	DATE COPIED	NO. MEN	NO. SKATES	GANGING LINE WT.	GANGING LINE KIND	GANGING WT.	GANGING KIND	SIZE OF HOOK	RIG	NO. LINES	NO. HOOKS PER SKATE
B.C. Producer	1971	6/11/72										
CAPTAIN	TRIP NO.											

DATE	NAME OF PLACE	COMPASS	DIST.	NO. SKATES	CATCH			
7/9	S.E. Corner Portlock	NE EE	20	30	11500	25		
8				12	7000	1		
9	Spring Is Chuckle	"	3½					
10	S.E. ped Chuckle Pt.	SxE	5	30	6000	26		
11	Chugach I			30	6000			
12				12	2000			
13	SW ped Chuckle Pt		8	5 3	1000	2660		
14				12	6000	1		
15	Herb Pt Kelp + red foil							
16								
17	S.E. Corner Portlock			12	8000	25		
18				21		1		
End								

INVENTORY	FACTOR
1	
AREAS	C.P.S.
GEAR ✓	SAMPLES

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel B.C. PRODUCER is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF JANUARY, 1972

D MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

PX 93

THE SECRETARY OF STATE
WASHINGTON

April 14, 1970

Dear John:

Thank you for your letter of January 30, 1970, advising me of the request submitted by Mr. Victor A. Sachse, Special Assistant to the Attorney General of Louisiana, for an interview with me and federal counsel to discuss issues pending in the case of United States v. Louisiana. These issues relate to the delimitation of the seaward extent of inland waters off the Louisiana coast for the purpose of application of the Submerged Lands Act of 1953.

I believe that it would be worthwhile for representatives from the State of Louisiana to visit the Department to discuss these issues. As Chairman of the Inter-Agency Committee on International Policy in the Marine Environment, Ambassador U. Alexis Johnson, the Under Secretary for Political Affairs, supervises the formulation of United States Government policy in this area. Mr. John R. Stevenson, the Legal Adviser of the Department, is principally responsible for directing the formulation of such policy. Therefore, it would be appropriate for Ambassador Johnson to represent me at the suggested meeting with the attorneys from the State of Louisiana. Mr. Stevenson would also attend.

With respect to the questions raised in your January 30 letter, the territorial sea of the United States is measured in strict conformity with the provisions of the Convention on the Territorial Sea and the Contiguous Zone. The United States Government

The Honorable
John [illegible],
[illegible]

- 2 -

has taken no action to establish a system of straight baselines pursuant to Article 4 of that Convention or customary international law with respect to any area along its coast. Regarding historic bays, the Legal Adviser, by letter dated February 20, 1969, to the Solicitor General, has already expressed his opinion on the status of Long Island Sound. The Department is unaware of any evidence regarding a claim by the United States Government of historic bays in any other area which would not now qualify as a legal bay under Article 7, paragraphs 1-5, of the Convention on the Territorial Sea and the Contiguous Zone. It has, for example, found no such evidence with respect to the area mentioned in your letter.

With best personal regards,

Sincerely,

William P. Rogers

PX 98

58-01

..ED STATES GO..ERNMENT

Memorandum

File 500

TO :Regional Director, BCF, Juneau, Alaska DATE: May 2, 1962

FROM :Chief, Branch of Resource Management

SUBJECT: Status of Shelikof Strait

Attached for your information and files are two copies of Secretary Udall's letter of April 20 to the Secretary of State discussing the Interior Department's treatment of the waters of Shelikof Strait in carrying out its fishery management functions prior to Alaska Statehood. You will note that the letter concludes that the jurisdictional status of the waters of Shelikof Strait is not affected in any way by any previous actions on the part of the Interior Department.

It is understood that the Department of State has requested the views of the Department of Justice and the Department of the Navy on the status of Shelikof Strait as inland waters or high seas. It is further understood that the views of these Departments, together with the information contained in Secretary Udall's letter, will be utilized by the Department of State in formulating a reply to Governor Egan's request for a ruling on the status of the Strait.

We shall keep you informed of further developments as we learn of them.

A. F. Rollins

A. F. Rollins

Attachments

Please send copies to Lindsley, Schoning, Shaklee, and Browning.

5/11/62

Act.	Info	To	Init.
		Reg. Dir.	
	✓		
	✓		
		Statistics	

COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

APR 20 1962

Dear Mr. Secretary:

The State of Alaska is contending as a basis for the seizure of the Japanese fishing vessel, Shoichi Maru No. 7, that the Department of the Interior, during its administration of fishing in Alaska, treated Shelikof Strait as inland waters. You have requested our advice as to the validity of this contention. We find no evidence to indicate that this Department or its predecessor in function, the Department of Commerce, ever asserted territorial jurisdiction as against any foreign national over the waters of Shelikof Strait more than three nautical miles from the Alaska Peninsula and Kodiak and adjacent islands.

For many years prior to Alaska statehood, the Department of the Interior and the Department of Commerce managed the commercial fishery resources of the Territory. These management functions were established by the Act of June 6, 1924 (43 Stat. 464, 48 U.S.C. 221), popularly known as the White Act. In December of 1924, the Department of Commerce adopted regulations to implement this Act, delineating certain fishing areas within which fishing was limited or prohibited (Department Circular 251, 11th Edition, Department of Commerce, December 2, 1924).

Article VI defined the Kodiak area as follows:

> The Kodiak area is hereby defined to include the waters of the [illegible] inland shore extending from Cape Douglas southeastward to Cape Ikolik and the territorial coastal and [illegible] waters of Alaska [illegible] adjacent islands, but excluding the waters enclosed within the Kodiak Forest and Fish Culture Reserve established by presidential proclamation of December 24, 1892. (Emphasis supplied.)

This definition was carried forward without relevant change in successive revisions of the regulations through 1959. The references to waters of the [illegible] coastal waters [illegible] and the term defensible evidence the Department's intention to limit the regulatory activities under the White Act to

those waters within the three-mile limit recognized as established American law. This language negates any assertion of jurisdiction over the entire waters of the Strait.

In 1956 this Department adopted new regulations defining the term "waters of Alaska" and redefining the Kodiak Area. The definition of "waters of Alaska" read as follows:

> For the purpose of these regulations, the term "waters of Alaska" north and west of the International Boundary at Dixon Entrance are defined as including t... ... extending 3 miles seaward (1) from the coast, (2) from lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and (3) from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland. (50 CFR 101.19, July 20, 1956; 50 CFR 101.20, March 7, 1959.)

The Kodiak Area was newly defined to include all waters from Kilokak Rocks to Cape Douglas, including Kodiak, Afognak, and adjacent islands. (50 CFR 103.1, April 21, 1956.) This definition was modified slightly in 1957 to insert the words "... waters of Alaska" in place of "all waters." (50 CFR 103.1, April 5, 1957.)

The regulations containing these new definitions of "waters of Alaska" and of the Kodiak Area were in force in only three fishing seasons--1957, 1958, 1959. During the previous thirty-two years the regulations had clearly excluded those waters of Shelikof Strait beyond the three-mile limit. In any event, these regulations defined fishing districts for management purposes only and were not intended to enlarge or extend the territorial waters of Alaska in a legal or jurisdictional sense.

So far as we can ascertain the regulations have never been invoked against any foreign fishing vessel. The White Act, under which the regulations were issued, does not provide that it shall be applicable to foreign vessels or nationals. The Act of June 14, 1906 (34 Stat. 264; 48 U.S.C. 251-257) had already prohibited alien persons from fishing for any species of fish "in any of the waters of Alaska under the jurisdiction of the United States" except by use, by line, or gaff. The laws of the United States since 1793 had restricted fishing in American waters to vessels of the United States (46 U.S.C. 251). Since the problem of fishing by aliens had already been dealt with by these acts, the White Act was directed only to regulate fishing by

United States citizens within the territorial waters from which aliens had, for all practical purposes, already been excluded. Any regulations promulgated under the White Act could not therefore be considered under any circumstances to be an assertion of territorial jurisdiction against foreign nationals.

The contention of the State of Alaska that the Department of the Interior has considered Shelikof Strait as historic inland waters is not supported by any evidence known to this Department. The Department has never, to our knowledge, excluded foreign vessels from the Strait.

It is our conclusion, therefore, that the status of Shelikof Strait as respects jurisdiction over its waters is not affected in any way by any previous actions on the part of this Department.

Sincerely yours,

(sgd) Stewart L. Udall

Secretary of the Interior

569-731 O - 76 - 15

Mr. Saudek.

U. S. EXHIBIT NO. 101

6-10-57

June 11, 1957

Director, Bureau of Commercial Fisheries, F. ,
Washington, D.C.

Acting Administrator, Alaska Commercial Fisheries, F. , Juneau, Alaska

Offshore Fishing - Alaska

Reference is made to Mr. Facchetti's subject memo of March , 1957. Attached under separate cover are overlays of [illegible] Bristol Bay area which show the one enclosed of the correct base line from which waters of Alaska should be determined.

In studying these proposed base lines the following principles should be considered:

(1) They do not represent the outer limits of territorial waters but are only the base from which outer limits are determined.

(2) We have attempted both to protect existing fishing in offshore area from seizure and to prevent the development of new such fisheries.

(3) [illegible] lines have been drawn to eliminate [illegible] orders. Actually it will be possible for the Secretary of the Interior to establish closed areas to the enlargement of our present territorial fisheries.

(4) Although relatively large areas of open water are controlled under [illegible], enlargement of our fisheries will be accomplished under controlled procedures.

(5) In drawing base lines, International waters will not be [illegible].

The overlay presents but a few [illegible] to [illegible] minor errors. However, the overlays may not be used for the base points indicated on charts [illegible] charts as discussed below:

(a) U.S.C.G.S. No. 2 (Alaska Peninsula and Aleutian Islands). (January 5, 1957). There [illegible] to be a [illegible] [illegible] Chart No. [illegible] [illegible] an limit but [illegible] to No. 2.

(b) U.S.C.G.S. 8502, Page St. Hills to Shumagin Islands) October 25, 1956). You will note two alternate lines between Cape [illegible] Hills and [illegible] Island. The solid line was our first

estimate but, upon further study of the flight, it was decided that in some years of entitled weather the deeper water [illegible] than the open ocean beyond the [illegible] for as far as ten miles. In view of our adopted principle (3) above, we recommend that the base line [illegible] follow the dotted one on the overlay.

We have drawn the base line from Cape [illegible] Island to [illegible] Point, and then have included all waters surrounding Nelson Island and the waters of Kashimof Strait. Fishing by our nationals within each Inlet and Kashimof Strait can be controlled through regular management procedures.

There is an existing Canadian halibut fishery in Kashvik Bay and various bays along the north side of Kashimof Strait. Our proposal is concerned with management of our salmon net fishery, but the Canadian halibut fishery should probably also be given consideration.

(3) U.S.C.G.S. 8502 (Alaska Peninsula and Aleutian Islands to Segum Pass) (March 9, 1955). The purse seine fishery in Ikatan Bight on the south side of Unimak Island would be eliminated within a distance of three miles from the base line we have drawn it. The purse seine fishery off Bear River on the north side of the [illegible] near Port Moller would also be so eliminated. You will note a double line across Bristol Bay, roughly between Cape Newenham and Cape Constantine. The dotted line is the present boundary of the area of management district. Since our base line represents the base from which the outer limit of fishing is measured, the solid line has been set three miles west of the Bristol Bay management line. Only [illegible] fishing in Bristol Bay and fishing in restricted to specified local areas.

(4) U.S.C.G.S. 8502 (Amukta Island to Umak Island) (November 10, 1951). This carries our proposed base line only out to 175 degrees west longitude.

(5) U.S.C.G.S. [illegible] (Bering Sea) (September 15, 1955). North of Bristol Bay, [illegible] salmon fishing exist [illegible] the Nushagak and Wood Rivers. Any other salmon fishing in the [illegible] are negligible and knowledge of salmon runs in the more northern rivers is relatively [illegible]. The base line in this area, as we have drawn it, is designed primarily to prevent any future development of offshore salmon net fisheries.

(6) U.S.C.G.S. 8500 (Arctic Coast of Alaska) (August 11, 1952). Any existing salmon commercial fisheries are negligible and knowledge as to the potential of this area is limited. We have drawn the base line.

2

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across the mouth of Ketchikan Sound recognized; there may some day develop a salmon or other commercial fishery within the Sound. The rest of the line should be the Canadian boundary has been drawn to pretty much follow the surf line.

We have not consulted the fishing industry in any respect concerning our proposed line; it has pertained only the thinking of members of our staff. Should you deem it proper, it might be well to discuss the matter at our public fishery hearings this fall to solicit further advice and to publicize what is being done.

C. RICHARD GIBBS

cc: Charrett
Scudder
Kimsley

PX 103

January 29, 1960

Mr. C. L. Anderson, Commissioner
Alaska Department of Fish and Game
229 Alaska Office Building
Juneau, Alaska

Dear Andy:

In response to your request of January 8, 1960, I am sending under separate cover, overlays of charts delineating the base-line along the Alaska coast from which we established the "Waters of Alaska" as defined in the Bureau of Commercial Fisheries Code, section 191.20, which was effective prior to transfer of management responsibilities to the State.

We have only one set of original charts showing such base-line from which the overlays are traced. We will keep these on file and make them available should you wish to inspect them. In drawing this base-line we believe that we have included all existing Alaska along shore salmon net fisheries.

This information was submitted to Canada upon their request for information concerning section 140.10 of our regulations, and was submitted with the explanation that this was the manner in which the regulations applied to U.S. fishermen. We definitely avoided any reference to International or Territorial waters.

I might add that we have not had occasion to make any arrests for violation of these regulations.

If you have any further questions on this matter, I will be pleased to discuss them with you.

Sincerely,

John T. Charrett
Regional Director

cc: Director, BCF, Washington, D.C.

JTCharrett:jn

PX 104

第　次航　昭和37年4月4日　時(　曜)

Voyage No　　Day. The 4th of April 1962

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Vis.	Barometer	Temp. Air	Temp. Sea	Log Rdg.	Remarks
	1												
	2		Drifting		SE	4	f		997.0	3.0			
	3												
	4				SE	4	b.c		998.5	3.0	3.5		
	5												
	6		Drifting		SE	2	c		1004.0	4.0			
	7	0.3	S.E.										
10.1	8	5.8	"		ESE	3	c		1002.7	5.0	3.5	1071	
	9	5.5											
	10	2.0	"		ESE	3	c		1005.0	6.5			
	11												
9.5	12		Drifting		SE	3	c		1004.0	6.0	4.0		
	13												錨泊位置 Anchor Position
	14		Drifting		East	3	c		1003.5	7.5			
	15	2.5	shifting										
8.0	16	6.3	Drifting		East	3	c		1004.0	5.5	4.0		
	17												残有量 Remained
	18		Drifting		ENE	3	c		1010.0	7.0			Coal or Oil 97.0 tons 118,443 gls
	19												Ballast Water 13.0 tons
	20				ENE	2	c		1011.2	4.0			Drinking Water 77.5 tons
	21												一日消費量 Daily Consumption
	22	5.0	Drifting		NE	2	c		1012.0	4.0			Coal or Oil 2.0 tons 3.5 tons
	23												Ballast Water 2.0 tons
5.0	24				E	3	c		1012.5	4.0	3.5		Drinking Water 1.0 tons

Noon Position — Latitude N 56°-54' Longitude W 153°-21'

Course: Coasting

24 hr Run: 24 hr 10 m / 12 hr 54 m

Distance Steamed: 18.0

Average Speed: 7.6

Run by Log:

Average speed by Log:

R. P. M: 131.0

Slip: 17.2%

Sounding of Tanks & Bilges

			F.P.	Deep F.W.	Eng.	A.P.	Deep F.W.	1	2	3	4	5	6	7
燃料油槽 Fuel Oil Tanks	午前 A.M.	P												
		S												
Ballast Tank	午後 P.M.	P												
		S												
			1	2	3	4	5	6	7					
汚水槽 Bilges	午前 A.M.	P												
		S												
	午後 P.M.	P												
		S												

二航海の合計 Total from to

Distance under Weight: 13°-02'-11"

Distance Steamed: 4°-22'-36"

Time Under Way: 923.0

Average Speed: 7.78

Distance by Log:

Coal or Oil Consumed: 57.5 tons

Water Consumed: 15.3 tons

Water Consumed: 265 tons

Draft: F — A — M

31

自　　港 至　　港　　港錨泊

From　　To　　Lying at 7.9

Used eng' sometimes shifting mid-ships

16th Moderate breeze. fine and cloudy 12 sea moderate.

16 1/2 P.M. 16th Started eng' on rd. marching two & a half points of the all catcher-boat.

17th Light breeze, cloudy 7 sea smooth.

1 AM Stopped eng' & Drifted.
1 1/2 Lay side Hayasawa-Maru No 2 for supplying F.O. & D.W.
11 Shuttle bridge Chuyo-Maru No 61 & No 62
12 Hayasawa-Maru No 2 left her.
12 1/2 Used eng' making wind-board & Drifting

1st Gentle breeze & cloudy 12 sea slight

6th Got alongside Hayasawa-Maru for supplying F.O. & D.W.

8th Cast off Hayasawa-Maru.
10th Got alongside Chuyo-Maru No 61 for supplying F.O. & D.W.

20th Light breeze & cloudy N, sea smooth.
(46°-02'N 161°-26'W)

21st 1/2 Cast off Chuyo-Maru No 61
23rd Used eng' making wind-board after drifting

AM Gentle breeze & cloudy N. sea slight

Course made, 40 miles.

Chief Officer　　Captain

第　次航　昭和37年4月5日　時(曜)

Voyage No　　Day. The 5th of April 1962

Time Hours	Time Min.	Miles	Course	Deviation	Direction (Winds)	Force	Weather	Vis.	Barometer	Temperature Air	Temperature Sea	Eng Rev.	Remarks
	1		Drifting										
	2				NE	2	F		1012.5	3.0			
	3												
5.5	4	5.5			NNE	3	C		1013.5	3.0	3.5		
	5		Drifting										
	6	4.3	45°		NNE	2	F		1014.0	5.0			
	7	8.3	"										
29.5	8	12.3	"		NNE	2	C		1014.5	7.0	4.0	149.5	
	9	7.5	"										
	10	7.5	"		NNE	3	C		1014.5	7.0			
	11	7.0	45										
22.0	12		Drifting		NNW	3	C		1014.8	5.0	4.5		
	13	7.5	" 01										錨泊位置 Anchor Position
	14	8.5	" 19		North	4	2C		1014.0	1.0	4.0		
	15	8.8	"										
34.1	16	8.5	"		NNW	3	8		1013.5	7.0	4.0	181.3	
	17	7.0	19										残有量 Remained
	18	7.7	"		NNW	3	8		1013.0	7.0			Coal or Oil A.O 136.3 Tons, D.O 7,620 L
	19	7.0	"										Boiler Water 16.0 T
30.0	20	8.0	"		NNW	3	8		1012.8	6.0	4.0	172.5	Drinking Water 45° 715 T
	21	8.0	" 300										日消費量 Daily Consumption
	22	7.7	"		NNW	4	8		1012.5	5.0			Coal or Oil B.F. 6,140 Bls, A.O 25 L
	23	5.5	"										Boiler Water 2.0 T
22.0	24	0.0	"		NNW	4	8		1012.3	5.0	4.0		Drinking Water 1.0 T

Noon Position — Latitude S 57° 19' N, Longitude W 52° 21' W

Sounding of Tanks & Bilges

		F.P.	Deep	F.W.	Bag	A.P.	Dry	1	2	3	4	5	6	7
清水 F.W.	A.M.	P												
		S												
Ballast Tank	F.W.	P												
		S												
								1	2	3	4	5	6	7
燃油 Oil	A.M.	P												
		S												
Bilge	F.W.	P												
		S												

Total from to

Noon Position	14h-02m-35s
Run	15h-06m-06s
Steaming Time	985.0
Average Speed	7.81
Coal or Oil Consumed	61,939 L
	538 L
Water Consumed	19.3 T
Water Consumed	23.51

	Draft
F	F
A	A
M	M

自　港　至　港　港錨泊

From　　To　　Lying at　F. Gt

32

Head eng' sometimes moving Wind a'hard after drifting.

10th Gentle breeze, cloudy & sea slight.

at 12 3/5 ob Stopped eng' commenced searching fish groups following with all catcher boat.
Co 45°

18th Light breeze, cloudy & sea smooth.

0th Co 45°
11th Stopped eng' after drifted for waiting Daiyo Maru No 61 owing to slow its eng' speed.

Noon Gentle breeze. cloudy & sea slight.

2nd Started eng' resumed searching fish groups.
Kodiak east coast. Co 120°
12th 3/10 to 61° 13th 3/10 to 18°

18th Gentle breeze & blue sky & sea slight.

20th Gentle breeze, blue sky & sea smooth.
(52°-09'-W 57°-16'-N)

21st 3/10 to 360°
Continued sucking fish groups through the night.

N.N. Mod' breeze & blue sky & sea mod'
Rounds made, all's well.

Chief Officer　　Captain

第　　次航　昭和 37 年 4 月 6 日　時(　曜)

Voyage No　　Day. The 6th of Apl 1962

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temp. Air °C	Temp. Sea °C	Engine Revs.	Remarks
	1	8.0	0°										
	2	7.2	"		NNE	4	C		1012.3	5.0			
	3	8.1	"										
30.5	4	7.2	"/289°		NNE	4	C		1013.5	5.0	4.0	170.3	
	5	6.6	289°										
	6	6.6	"		WNW	4	C		1016.0	7.0	4.0		
	7	3.7	"										
74.4	8	4.5	"		WNW	4	C		1012.0	7.0	4.0	170.3	
	9	7.0	"/270°										
	10	7.5	"		W	6	C		1018.0	5.0	4.0		
	11	7.5	"/301°										
30.0	12	8.0	"		SE	7	C		1020.0	4.0	4.0	173.4	
	13	8.4	"										錨泊位置 Anchor Position
	14	9.7	"/88°		SE	4	C		1022.0	8.0			
	15	9.5	"										
37.9	16	8.8	"		ENE	4	C.C		102.0	6.0	4.0	181.1	
	17	8.2	242°										残量 Remained
	18	0.7	/88°		SSE	2	C		1022.0	8.0	4.5		Fuel oil on A 9.597 t
	19		Drifting										Water 15.0 t
38.6	20				SSW	2	C C		1023.2	4.0	3.5		Drinking Water 30.5 755 t
	21												一日消費量 Daily Consumption
	22		Drifting		SW	3	C C		1023.0	4.0			Fuel oil P.S. 5.1 20 Kl
	23												A 1.0 23 t
	24				SSW	4	C		1023.0	4.0	3.0		Water A 1.0 t
													Drinking Water 1.0 t

Noon Position Latitude	Longitude
Obsd 5° 52'	152° 58' W
DR	
Run by Log	24.0 m
Run by Dr	23.5 m
Diff	164.0'
Av. Speed	6.83'
D. Run by Log	
Av. spd by Log	
Set & Drift	
True & Mag. Courses	
R.P.M	167±
Av. R.P.M	21.0

Coasting

Sounding of Tanks & Bilges

			F.P.	Deep	F.W.	Eng.	A.P.	F.O.	1	2	3	4	5	6	7
Ballast Tank	A.M.	P													
		S													
	P.M.	P													
		S													
			1	2	3	4	5	6	7						
Fuel Oil Tank	A.M.	P													
		S													
Bilge	P.M.	P													
		S													

二港間の合計 Total from to

Miles	15-2-30
Hours	4-05-57
Fuel Oil	1149.0
Av. Speed	7.66
D. Run by Log	
Av. Speed by Log	
Fuel Oil Consumption	67.0 t
Water A	3.0 t
Drinking Water	2.5 t
Draft	F / A

日　　港位　　時　　碇泊中　　33

From　　To　　Lying at 7.G

0300 Wind to ESE

0800 Moderate breeze & fine sky 1/10 sea moderate.

Continued sucking fish jumps.

2000 Moderate breeze & fine sky 1/10, sea moderate.

0900 Ushagat N. cape on 184° dist 10.0 Miles.
Wind to ESE

1000 Wind to East

Noon Moderate breeze & fine 1/10 sea rough.

1300 Wind to NE

1600 Moderate breeze fine but cloudy 1/10 sea moderate.
Wind to East

1800 Stopped eng. after drifting

1200 Get alongside Shoshi Maru no 7 at 58°02'N 153°00'W for supplying F.O & F.W.

2000 Light breeze & fine but cloudy 1/10 sea smooth
(58° 06'N 152° 38'W)

2000 Cast off Shoshi Maru no 7

2100 Get alongside Dairyo Maru to repairing eng.

Continued repairing Dairyo Maru eng through night

0400 Wind to E Light breeze & fine but cloudy 1/10 sea moderate
Towing vessel Dairyo Maru

Chief Officer _____　　Captain _____

第　次航　昭和 27 年 4 月 7 日　時（　曜）

Voyage No　　Day. The 7th of April 1952

時 Hour	分 Min.	航程 Miles	針路 Course	自差 Deviation	風向 Directions	風力 Force	天候 Weather	視程 Vis.	気圧 Barometer	気温 Temperature Air	気温 Temperature Sea	上甲板乾湿 Dry or Wet	摘要 Remarks
	1		Drifting										F.W
	2				SSW	6	R		1023.0	3.5			No 6 Shoichimaru
	3												Supp'd 4.0 t
	4		)		SSW	4	Cu c		1023.0	3.0	3.5		F.O
	5												No 6 Shoichimaru
	6	1.0	Var'		SSW	5	C		1022.0	4.0			Supp'd 439 bbls
	7	3.8	"										
	8	2.0	"		ESE	4	C		1025.0	2.0	3.0		
	9												
	10	1.0	Drifting		SSW	3	C		1025.0	4.0			
	11	1.5											
4.1	12	4.0	Shifting		SSW	4	C		1025.0	4.0	3.5		
	13		Drifting										錨泊位置 Anchor Position
	14				SSW	3	C		1025.0	3.0			
	15												
	16		)		SSW	3	C		1024.0	4.0	4.0		
	17												残存量 Remained
	18		Drifting		SSW	2	Cu c		1024.0	4.0			重油 Coal or Oil 21 F.O 41.270 KL / D.O 1.572
	19												缶水 Boiler Water 130 t
	20		)		SSW	2	Cu c		1024.0	4.0			飲料水 Drinking Water 65.0 / 25.5 71.5 t
	21												一日消費量 Daily Consumption
	22		Drifting		SW	1	Cu c		1024.0	4.0			重油 Coal or Oil 21 F.O 2.260 KL / D.O .25
	23												缶水 Boiler Water 2.0 t
	24				SSW	1	Cu c		1024.0	3.0	4.0		飲料水 Drinking Water 1.0 t

Noon Position

Latitude 27°-51', Longitude 58°-0'W

Course Coasting

Dist. made good 24h-10m

Dist. run 4°-42'

D. Run 84.0'

Av. Speed 3.5 t

Run by Log

Av. spd. by Log

Curren. direction

Force

R. F. M

Ship's

Sounding of Tanks & Bilges

		F.P.	Deep F.W.	Eng.	A.P.	S.W.	1	2	3	4	5	6	7
喫水 Draft	A.M.	P											
		S											
Ballast Tank	P.M.	P											
		S											
			1	2	3	4	5	6	7				
喫水 Draft	P.M.	P											
		S											
Bilge	P.M.	P											
		S											

航海日誌の合計 Total from to

Time under Weigh 6d-02h-35m

Hours Towing 0d-15h-21m

Total Dist. Run 1248.0

Av. Speed 7.7 t

Dist. Run by Log

Av. Speed by Log

Coal or Oil Consumed F.O 72.010 KL / D.O 57.2 t

D. Water Consumed 21.3 t

B. Water Consumed 21.5 t

Draft

F

A

M

34

自 From　港 　至 To　港 　港泊中 Lying at 7. C.

4h Fresh breeze & fine wet cloudy sea rough

8h Cast off Liverpool Stone wall
10h Weighing nothing in sight

12h topped eng after drifting
4h mod' brze & cloudy sea mod'

now Mod brze & cloudy sea mod'

8h spk Liverpole Liverpool Stone wall repairing eng' waiting to eng' accident repair.

12h Gentle breeze cloudy sea slight

4h provided repairing eng' Liverpool Stone wall Cast off.

Captain Drifting.

12h Light breeze & fine wet cloudy sea smooth.
(68°-06'W 27°-51'N)

4h Light airs & fine blue sky cloudy with detached cloudy sea very smooth.

Sounds water all well.

Chief Officer　　Captain

第　次航　昭和27年11月2日　時(　曜)

Voyage No　　Day. The 5th of Nov 1952

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temp. Air	Temp. Sea	Long. Diff.	Remarks
	1												
	2		Drifting		South	3	C		1023.0	3.0			
	3												
	4				South	4	C		1022.5	2.0	2.5		
	5												
	6	6.5	225°		SSW	4	C		1022.0	3.0	3.5		
	7	9.5	"										
17.2	8	6.2	"		SSW	4	R.C		1022.5	3.0	3.0		
	9												
	10		Drifting		SSW	4	R.C		1023.0	3.0			
	11	4.5											
4.5	12				SSW	4	R.C		1022.5	5.0	4.0		
	13												
	14		Drifting		SW	3	R.C		1022.0	6.0			
	15												
	16				SW	3	R.C		1021.5	9.5	8.5		
	17												
	18		Drifting		SSW	1	R.C		1021.5	7.0			
	19												
	20				ESE	1	R.C		1022.0	5.0	4.0		
	21												
	22		Drifting		ESE	1	C.C		1023.0	4.0			
	23												
	24				South	1	C.C		1023.5	4.0	5.0		

Remarks

Anchor Position

Remained
Coal or Oil F.O 52710 M/T, L.O 1.357 L
Water Ballast 115 T
Drinking Water 44.0, 24.5 1952

Daily Consumption
Coal or Oil F.O 2,490 M/T, L.O 15 L
Water Ballast 1.5 T
Drinking Water 1.0 T

Noon Position — Latitude 57°-37'N, Longitude 153-52E

Course: resting

Run: 24K →0mm, 2K →42mm

D. Run 22.0

Av. Speed 8.15

T. Run by Log 197.3

Av. Speed by Log 20.4

Error of Compass

Current direction

Sounding of Tanks & Bilges

			P	S	1	2	3	4	5	6	7
F.P.		A.M									
		P.M									
Ballast Tank		A.M									
		P.M									
A.P.		A.M									
		P.M									
Bilge		A.M									
		P.M									

Total from to

Noon Position 17°-42'E-30'
Noon Position 06°-18'E-21'
Run 1265.0
Course 270°
D. Run by Log
Av. Speed by Log
Coal or Oil Consumed F.O 73.730 M/T, L.O 515 L
D. Water Consumed 2234
D. Water Consumed 33.5

Draft: F, A, M

35

From　　To　　Lying at F.G.

10ᵘ Moderate breeze & cloudy ᵖᵗ, sea moderate.

1ᵘ started engᵈ cont'ᵘᵉ moving o'ward.

2ᵘ Stopped engᵉ after drifting

3ᵘ moderate breeze - fine but cloudy ᵖᵗ sea moderate.

All catcher boat cont'ᵘᵉ sucking fish pump.

Noon: Mod. breeze & clear sky ᵖᵗ with detached cloudy ᵖᵗ sea mod.

4ᵘ Gentle breeze & fine but cloudy ᵖᵗ sea slight.

Catcher boat 200

10ᵘ Light air & fine but cloudy ᵖᵗ sea very smooth.
(42° 08'N 153° 48'E)

4ᵘ light air & clear sky ᵖᵗ sea very smooth

Sounds made, all's well

Chief Officer　　Captain

第　次航　昭和37年4月9日　時(　曜)

Voyage No　　Day. The 9th of April 1962

Hours	Miles	Course	Deviation	Direction	Force	Weather	Vis.	Barometer	Temperature Air	Temperature Sea	Remarks
1		Drifting									Boiler water.
2				Calm		C		1023.5	8.0		Supplied 2.0 T
3											
4				SE	2	C		1023.0	8.0	7.0	
5											
6	2.0	Drifting		SSE	2	C		1023.5			
7											
8	2.0			ESE	1	C		1024.0	7.5	3.5	
9											
10		Drifting		East	1	C		1024.0	8.0		
11											
12				ENE	1	C		1024.0	7.0	5.0	
13											Anchor Position
14		Drifting		ENE	1	C		1023.5	3.5		
15											
16				ENE	1	C		1023.0	5.0	5.0	
17											Remained
18		Drifting		NW	1	C		1023.5	7.0		Coal or Oil 84.0 T 3.5 T
19											Boiler Water 12.5 T
20				NW	1	C		1023.3	4.0	3.0	Drinking Water 33 67.5 T
21											Daily Consumption
22		Drifting		NW	1	C		1023.2	3.0		Coal or Oil 3.0 T 3.2 T/H
23											Boiler Water 2.5 T
24				NW	1	C		1023.0	2.5	3.0	Drinking Water 1.0 T

Noon Position

Latitude　Longitude

Obs'd　5°-55N　153-55W

Dead reckoning

Distance run　24-00 m

Course　01°-79 m

Time Underway　3.0

Average Speed　7.58

Average Speed by Log

Total & Current Direction

Sounding of Tanks & Bilges

		F	C	F.W.	Eng.	A. P.	Daily F.W.	1	2	3	4	5	6	7
船首	A.M.	P												
		S												
Ballast Tank	P.M.	P												
		S												
			1	2	3	4	5	6	7					
船尾	A.M.	P												
		S												
Bilge	P.M.	P												
		S												

Total from to

Distance made 1563.0

Average Speed 7.71

Coal or Oil Consumed 33.7 T 60.2

Fresh Water Consumed 2.0 T

Salt Water Consumed 35 T

Draft

F

A

M

日　場所　船　港務的　36

From　　To　　Lying at 7 G

16th Light breeze blue sky & clear sight

17th light breeze blue sky & very smooth

18th Got alongside Neida Harbour
19th Ships Wreche Removed

20th Kept sailing in blue sky & very smooth

21st Light air & blue sky & sea smooth

22nd light air & blue sky & very smooth.
(LAT 01°-19 LONG 160°-02)

23rd light air & blue sky & sea very smooth.
Sunset made distance

Chief Officer　　Captain

第 次航 昭和37年 4月10日 時(曜)

Voyage No Day. The 10th of April 1962

Time	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temperature Air	Temperature Sea	Eng. Rev.
1											
2		Drifting		NE	1	C		1022.0	3.0		
3											
4				Calm		C		1022.0	3.0	3.5	
5											
6		Drifting		NE	1	C		1022.0	4.0		
7											
8				NE	1	C		1022.0	6.0	3.5	
9											
10		Drifting		NE	1	C		1022.0	6.0		
11											
12				NE	1	C		1021.5	8.0	4.0	
13											
14		Drifting		NE	1	C.		1020.5	5.0		
15											
16				NNE	3	C.		1019.0	4.0	4.0	
17											
18		Drifting		NNE	2	C		1018.0	5.0		
19											
20				NNE	2	C		1018.0	4.0	3.5	
21											
22		Drifting		NNE	2	C		1018.0	4.0		
23											
24				NNE	2	C		1016.5	3.0	3.0	

Remarks: Boiler water Supplied 2.5 T

Anchor Position

Remained

Daily Consumption

Noon Position — Latitude: 57°-55N, 54-02W — Longitude: 24°-05W

Sounding of Tanks & Bilges

Total from to

Draft

From To Lying at F. G

6th Calm & blue slight sea smooth.

7th Light air & blue slight sea very smooth.

8th Light air & blue slight sea very smooth.

9th Gentle breeze & fine but cloudy slight sea smooth.

10th got alongside Hyperion to remove pox & apply same.

11th U.S. ALASKA FISHERY DEPARTMENT OFFICER came on board & by Hydroplane to inspect & in board.

12th They left her: 8th Cast off they remain there yet.

20th Light breeze & cloudy fine & very smooth.

(61°-55'N 18°-06'W)

Mist light breeze & cloudy & sea smooth.

Rounds made, all's well.

Chief Officer Captain

第　次航　昭和 37 年 4 月 11 日　時(　曜)

Voyage No　　Day. The 11th of April 1962

Time	Hour	Miles	Course	Deviation	Winds Direction	Force	Weather	Via	Barometer	Temperature Air °C	Sea °C	Engine Revs
	1											
	2		Drifting		WNW	2	C		1015.0	2.0		
	3											
	4	4.0	295° Drifting		WNW	2	C		1014.0	3.0	3.5	
	5											
	6		Drifting		WSW	2	C		1013.0	2.0		
	7											
	8				SW	1	C		1013.5	2.0	3.0	
	9											
	10		Drifting		SW	1	C		1011.5	6.0		
	11											
	12				SW	1	C		1010.5	7.0	3.5	
	13											
	14		Drifting		WSW	1	A		1009.0	4.0		
	15											
	16				NNE	1	A		1007.5	3.0	4.5	
	17											
	18		Drifting		NNW	2	A		1006.0	0.0		
	19											
	20				NNW	1	A		1006.5	1.0	3.5	
	21											
	22		Drifting		NW	2	A		1004.5	0.0		
	23											
	24				NW	2	A		1004.0	2.0	3.5	

Noon Position
Latitude 57° 57' N　Longitude 15° 00' W

Sounding of Tanks & Bilges

			P	F	Deep	F.W.	Eng.	A.P.	Dry	1	2	3	4	5	6	7
荷倉	0-8	AM	P													
			S													
Ballast Tank	0-8	PM	P													
			S													
				1	2	3	4	5	6	7						
	0-8	AM	P													
			S													
Bilge	0-8	PM	P													
			S													

Remarks

Boiler water Supplied 30 ℔

Anchor Position

Remained
Coal or Oil 75.5 Tons
Boiler Water 15.5 ℔
Drinking Water 68.5 ℔

Daily Consumption
Coal or Oil 2.5 Tons
Boiler Water 1.5 ℔
Drinking Water 1.0 ℔

Total from to
Time under Way 05h-19h
Time Steaming 05h-19h
Run 127.0
Av. Speed 7.7
Coal or Oil Consumed 46.5 Tons
Water Consumed 25.5 ℔
Water Consumed 37.0 ℔

Draft
F
A
M

38

From　　To　　Lying at 7. G.

0h Weather moving wind NNW 2 Slight swell rolling

4h Light breeze overcast sea smooth.

8h Light air overcast sea very smooth.

Noon Light air & shiny sea very smooth.

4h Light air & sunny sea smooth.

8h Light air overcast sea very smooth.
Lat 57°-57 N, 15°-00 W

Mid Light airs & sunny sea smooth.
Soundings made. All well

Chief Officer　　Captain

第　次航　昭和 37 年 4 月 12 日　時（　曜）

Voyage No　　Day. The 12th of April 1962

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temperature Air °C	Temperature Sea °C	Engine Revs	Remarks
	1												Boiler water
	2		Drifting		NW	4	5		1003.0	1.0			Supplid 2.0 ton
	3												
	4				NNW	5	7		1003.5	1.5	4.0		
	5												
	6		Drifting		NNW	5	6		1003.5	2.0			
	7												
	8				NNW	4	8.0		1003.0	3.0			
	9												
	10		Drifting		WSW	3	8.0		1003.5	2.0			
	11												
	12				WNW	4	6.0		1003.5	1.0	4.0		
	13												
	14		Drifting		SSW	4	8		1004.0	1.0			
	15												
	16				WSW	4	8		1003.5	1.0	4.5		
	17	4.5											
	18		Drifting		NW	3	8		1004.0	2.0			
	19												
4.5	20				East	2	8		1004.0	2.0	4.0		
	21												
	22		Drifting		SW	3	8		1004.5	0.0			
	23												
	24				SSW	3	8		1004.5	0.0	4.0		

Anchor Position

Remained
Coal or Oil　320 tons 37.490 tons
L.O　9.115 L
Boiler Water　10.5 ton
Drinking Water　42.0 / 1.0 t　14.5 ton

Daily Consumption
Coal or Oil　320 tons − 309 tons = 7.0 tons
Boiler Water　1.0 ton
Drinking Water　2.0 ton

Noon Position
Latitude　Longitude
Obs'd　37° - 47' N / 158° - 48' E

24hr - 00min

Sounding of Tanks & Bilges

			F.P.	Deep P.W.	Eng.	A.P.	1	2	3	4	5	6	7
Ballast Tanks	A.M.	P											
		S											
	P.M.	P											
		S											
			1	2	3	4	5	6	7				
A. W.	A.M.	P											
		S											
Bilge	P.M.	P											
		S											

Total from to
Time Steamed　1st - 12th = 12720
Av. Speed　7.79
Coal or Oil Consumed　37.490 − 33.710 = 3.780 t
Water Consumed　39.0 t

Trim A. P. M.　Draft F. A.
Current direction

自　港　至　港　港費泊　　39

From　　To　　Lying at　T. C.

6th Fresh breeze & raining W. sea rough.

8th Fresh breeze & fine but cloudy W. sea slight.

10th Moderate breeze & fine but cloudy W. sea moderate.

12th Heaving & Coasting shifting wind sea ↑.

16th Moderate breeze & blue sky W. sea moderate.

18th Stopped engine after drifting.

20th Light breeze & blue sky W. sea smooth.
(L) 47° 48' N 158° 48' E

21st Light breeze & fine sky W. sea smooth.
Sounds made all 3 wells.

Chief Officer　　Captain

Voyage No Day. The 13th of [illegible] 1912

Time	Miles	Course	Deviation	Direction	Force	Weather	Vis.	Barometer	Temperature Air	Temperature Sea	Remarks
1											
2		Drifting		South	3	[illegible]		1000.0	1.0		
3											
4				South	3	[illegible]		1007.0	1.0	4.5	
5											
6		Drifting		SSE	2	[illegible]		1007.5	2.0		
7											
8				SSE	2	[illegible]		1007.0	4.0	3.5	
9											
10	2.0	Drifting		South	2	[illegible]		1007.5	6.0		
11				South	1	[illegible]		1007.5	10.0	4.0	
12											
13		Drifting									Anchor Position
14				ENE	3	[illegible]		1007.0	5.0		
15											
16				ENE	3	[illegible]		1007.5	5.0	4.5	
17	2.0	Drifting									Remained
18				ENE	3	[illegible]		1007.5	6.0		Coal on Oil [illegible]
19											Water [illegible]
20				South	3	[illegible]		1007.5	4.0	3.5	Drinking Water [illegible]
21		Drifting									Day Consumption
22				SW	3	[illegible]		1009.0	2.0		Coal on Oil [illegible]
23											Water [illegible]
24				SW	3	[illegible]		1006.5	1.0	3.5	Drinking Water [illegible]

Note Position — Latitude / Longitude

Sounding of Tanks & Bilges

Tots from to

40

From To Lying at F. G

16th Gentle breeze & blue sky [illegible], sea slight.

20th Light breeze, blue sky [illegible] & sea smooth.

11th Hood eng' moving a'ind-wars.
11th Stopped eng' after drifting.

Noon Light air, fine [illegible] & sea very smooth.

16th Gentle breeze & blue sky [illegible], sea slight.

16th Started eng' [illegible] moving a'ind-wars.
16th Stopped eng' after drifting

17th Got alongside Christiana. 19th Cast off Christiana

20th Light breeze & blue sky [illegible], sea smooth.
([illegible])

Noon Gentle breeze & fine [illegible], sea slight
Sounds made all's well

Chief Officer Captain

第 次航 昭和37年 4月 14日 時(曜)

Voyage No Day. The 14th of April 1962

Total Miles	Hours	Miles	Course	Deviation	Winds (1) Direction	Winds (2) Force	Weather	Vis.	Barometer	Temperature (1) Air °F	Temperature (2) Sea °F	Engine Revs.	Remarks
	1												
	2		Drifting		South	3	C		1005.5	1.0			
	3												
	4				South	3	C.U		1004.5	1.0	3.0		
	5												
	6		Drifting		South	3	C.U		1003.0	3.0			
	7												
	8				SW	2	C.U		1002.0	4.0	3.0		
	9												
	10		Drifting		SW	1	C.U		1001.0	4.0			
	11												
	12				SW	1	C.U		1001.5	4.0	4.0		
	13												
	14		Drifting		Calm		C		999.0	7.0			
	15												
	16				NNE	1	C		997.5	4.0	4.0		
	17												
	18		Drifting		NNE	1	C.U		997.5	2.0			
	19												
	20				Calm		C.U		997.0	4.0			
	21												
	22	2.5	Drifting		Calm		C		997.0	2.0			
	23												
Brd	24				Calm		C		997.0	2.0	3.5		

Noon Position — Latitude: 5° 1K' — Longitude: 153-32E

Distance Made	24 M - 00 M
Total Distance	66 M - 27 M
Average Speed	2.6
Days Run	2.27

Sounding of Tanks & Bilges

			P.P	Deep T.W	Bag	A.P.T	1	2	3	4	5	6	7
F.W.	A.M.	P											
		S											
Before Tank	D.B.	P											
		S											
			1	2	3	4	5	6	7				
F.W.	A.M.	P											
		S											
Ship	D.B.	P											
		S											

Remained

Fuel Oil	M/T	309 T.
Water	T	14.0
Drinking Water	T	12.5

Daily Consumption

Fuel Oil	M/T	3.5
Water	T	1.5
Drinking Water	T	1.0

Total from to

	23°-02'-5E
	5°-28'-1S
	1279.0
	778
P	P/S 1/P
S	2.9
	41.5
C	Draft
P	P
S	S

Anchor Position

41

自 港 至 港 碇泊地 From To Lying at F. G.

04th Gentle breeze & fine cut cloudy S.E. sea slight.

08th Light breeze & fine cut cloudy N.E. sea smooth.

10th Got alongside Clan Alpine.

Noon Light air & fine cut cloudy S.E. sea very smooth.

16th Clan Alpine left her.

16th Light air & cloudy S.E. sea very smooth.

20th Calm & fine cut cloudy S.E. sea very smooth.
(5°-01'N 153°-46'E)

21st Got alongside "Teal" U.S.A F.D.C Fishing Inspection Boat & came on board some FISHERY DEPARTMENT OFFICER.
23rd Cast off "Teal" Captain went together by reason of speak territorial waters. & Clan Alpine. Daingo Maru No.61 were suspected of speak territorial waters also arrested.
Calm & fine S.E. sea very smooth.

Chief Officer _____ Captain _____

第　　次航　昭和37年 4月1日　時(　　)

Voyage No　　Day. The 1st of April 1962

Total Miles	Hours	Miles	Course	Designate	Winds (Direction)	Winds (Force)	Weather	Visibility	Barometer	Temperature Air °C	Temperature Sea °C	Ship's Rot.	Remarks
	1	10.0	Drifting										
	2			WSW	1	S.C			997.5	0.5			
	3												
100	4			WSW	1	C			997.5	0.5	3.0		
	5												
	6		Drifting	WSW	2	C			997.2	1.0			
	7												
	8			WSW	1	S.C			995.0	2.0	3.0		
	9												
	10		Drifting	WSW	2	S.C			1000.0	4.0			
	11												
	12			WSW	2	S.C			1000.0	4.0	4.5		
	13												Anchor Position
	14		Drifting	W	1	C			1001.0	5.0			
	15												
	16			WNW	2	S.C			1001.5	4.0	4.5		
	17												Remained
	18		Drifting	NW	1	S.C			1002.5	2.0			
	19												
	20			NW	1	S.C			1003	2.0	3.5		
	21												Daily Consumption
	22		Drifting	NW	1	S.C			1004.0	3.0			
	23												
	24			NW	1	S.C			1005.0	2.0	3.5		

Noon Position — Latitude — Longitude

Obsd 5 1° 02N, 52-5/2

Dist. Run 24 2-00 W

Course made 1-35 W

Dist. to Go 120.0

Dist. to Log 8.75

Time & Correct direction W. 11 2E 0.0 15.5°

Soundings of Tanks & Bilges

			1	2	3	4	5	6	7
Fore Hold	AM	S							
	PM	S							
Main Hold	AM	S							
	PM	S							
Deep Tank	AM	S							
	PM	S							

Total from to

From　　To　　Lying at Y. G　　42

Chief Officer executed as proxy for command on account of Captain absence.

Heading sometimes moving ahead & back.

12th Light air & cloudy & sea smooth.

13th Light air & fine and cloudy & sea very smooth.

Noon Kōhō-Maru arrived our fishing ground

13th Got alongside Kōhō-Maru at 58°-04'N 165°-50'W
12th Started loading cargo at No.2 Hatch

16th Light breeze & fine and cloudy & sea slight
1st finished cargo work

17th Cast off Kōhō-Maru.

21st Light air & fine and cloudy & sea very smooth.
22nd Got alongside Shoichi-Maru & received fishing material

23rd Cast off Shoichi-Maru.

24th Light air & fine and cloudy & sea very [illegible]
Rounds made, all's well.

Chief Officer　　Captain

第　次航　昭和37年 4 月 16 日　時(　曜)

Voyage No　　Day. The 16th of April 1962

Total Miles	Hour	Miles	Course	Deviation	Winds (Direction / Force)	Weather	Vis.	Barometer	Temperature Air	Temperature Sea	Error	Remarks
	1	0.5	105°-135°									
	2	10.5	Var.		SW	2	C	1010	0.0			
	3		Drifting									
12.5	4				Calm	0	C	1011	0.0	0.0		
	5											
	6				W.S.W	0	C	1017.0	4.0			
	7											
	8				W.S.W	2	C	1017.5	5.0	3.5		
	9											
	10		Drifting		W.S.W	1	C	1017.5	7.0			
	11											
	12				W.S.W	1	C	1018.2	7.0	3.5		
	13											
	14		Drifting		E.S.E	2	C	1018.0	9.0			Anchor Position
	15											
	16				E.N.E	0	C	1017.5	4.0	3.5		
	17											
	18		Drifting		N.N.E	2	C	1017.5	4.0			Remained
	19	1.8	Var.									
4.3	20	2.0	"		N.N.E	0	C	1017.8	3.0	3.5		
	21	0.5	"									Daily Consumption
	22	1.5	"		N.N.W	2	C.	1017.5	3.0			
	23		Drifting									
5.2	24				N.N.W	2	C.C	1018.0	3.0	3.5		

Noon Position — Latitude 37° 52.4 N — Longitude 154-17.5 E

D.R.	
Run since Noon	24.6 - 00 M
Set & Drift	24.12 M
Var.	20.0
Speed	12.1
Run to Log	
Average Day's Log	
Dep. & Drift	
Tide & Current direction	
R. P. M.	194.7
Slip	3.7 %

Sounding of Tanks & Bilges

		P	1	2	3	4	5	6	7
F.P. Deep									
F.W. Reg.									
A.P.									
Fore Peak									
Double Bottom	P.M.	P							
		S							
Ballast Tank	P.M.	P							
		S							
			1	2	3	4	5	6	7
Double Bottom	A.M.	P							
		S							
Ballast Tank	A.M.	P							
		S							
Bilge	P.M.	P							
		S							

Total from to

Noon-Noon Dist.	25°-02'.3
Noon Position	05°-23'.5
Run Dist.	1313.0
Average Speed	7.7 k
Run to Log	
Log Reading	6911.2
Water Consumed	81.3 T
Water Remained	45.7 T

Draft: F / A / M

43

From　　To　　Lying at　F. G

Hoisting sometimes steering various courses.

0400 Gentle breeze & cloudy, sea smooth.

Hoisting sometimes steering various courses.

0400 Light air & cloudy, sea smooth.

0824 Got alongside fishery inspection boat "Juneau" U.S. fishery department & came aboard our Captain came back aboard.
1000 Cast off "Juneau".
1054 Got alongside Wainyo Maru & supplied No. 2 & provision material.
1149 Cast off Wainyo Maru.

Very light air & cloudy, sea very smooth.

0600 Got alongside Nagadowa Maru & supplied as etc.
1600 Cast off Nagadowa Maru.
1640 Got alongside Nagadowa Maru & supplied as etc.

0400 Gentle breeze & cloudy, sea smooth.
0600 Nagadowa Maru left us.

1800 SBS Hoisting & resumed shifting fishing ground.

2000 Gentle breeze, overcast & sea slight

2100 Stopped eng. after drifting.

NW light breeze & fine but cloudy, sea smooth.

Rounds made. All's well.

Chief Officer　　Captain

PX 107

POUCH | UNCLASSIFIED (Security Classification) | DO NOT TYPE IN THIS SPACE 611.426/10-858

FOREIGN SERVICE DESPATCH

EMBASSY OTTAWA

TO THE DEPARTMENT OF STATE, WASHINGTON. October 8, 1958

Department's A-90, September 27, 1957. OCT 9 - 1958

FOR Info. Only | FILE | SUBJECT: COMMENTS OF CANADIAN DEPARTMENT OF FISHERIES REGARDING REGULATION OF FISHING OFF ALASKA.

The Department's A-90 of September 27, 1957 requested the Embassy to forward to Mr. G. R. Clark, Deputy Minister of the Canadian Department of Fisheries, copies of certain legislation, regulations and charts relating to the regulation of salmon fishing in the North Pacific:

1. Public Law 85-114, approved July 24, 1957,
2. Regulations issued by the Secretary of the Interior on July 25, 1957, and
3. Charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based.

Enclosed is a copy of a self-explanatory letter dated October 7, 1958, which the Embassy received from the Department of External Affairs expressing the desire of the Canadian Department of Fisheries to have a discussion at the earliest opportunity with appropriate United States officials as to the question of the location of lines limiting fishing off Alaska.

Action Requested: The Department is requested to supply the Embassy in due course with information on which a reply may be based to the Department of External Affairs for the Department of Fisheries.

FOR THE CHARGE D'AFFAIRES A.I.:

(Name and Title)

Delmar R. Carlson

Second Secretary of Embassy

Enclosure:
Copy of letter dated October 7, 1958.

cc: DNA

DRCarlson/acd (Typing) | UNCLASSIFIED

ACTION COPY - DEPARTMENT OF STATE

The action office must return this Permanent record copy to DC/R files with an endorsement of action taken.

611.426/10-858

EMS 858

UNCLASSIFIED (Classification) | Page 1 of | Ref. No. 3 | Dep. No. 341 | Oct. 8, 58 | Embassy Ottawa

DEPARTMENT OF EXTERNAL AFFAIRS
CANADA Ottawa,
October 7, 1958.

Dear Mr. Thompson:

In a letter to your Embassy dated October 27, 1957, the Deputy Minister of Fisheries acknowledged receipt of charts of Alaska, prepared by the United States Fish and Wildlife Service, showing the approximate location of certain off-shore fishing boundaries. He stated that his Department would study and forward comments on the location of these lines in relation to similar lines for California, Oregon, Washington, and British Columbia which had been considered and adjusted at the Conference on Coordination of Fisheries Regulations between Canada and the United States, held in Seattle on February 27, 1957.

This study of the Alaska charts has now been made and it would seem desirable to have an opportunity to discuss the location of the Alaska lines with the appropriate United States officials at an early date.

Research was undertaken following the Seattle Conference to determine whether or not the lines delimiting off-shore waters across the Strait of Juan de Fuca (Bonilla Point-Tatoosh Island line) should be relocated on the basis of scientific findings. At the Conference, provision was made to review within two years the results of the research. Since the interested agencies may meet to review research early in 1959, the location of the Alaska fishing boundary line might well be reconsidered at that time.

It would be appreciated if you would advise the United States Fish and Wildlife Service of our desire to discuss the location of the Alaska fishing lines at their early convenience, suggesting that if a meeting is to be scheduled early in 1959 to consider the results of research and the location of the Bonilla-Tatoosh boundary line, this would be an appropriate time to consider the question of the Alaska line.

Yours faithfully,

H. Cadieux
(for the) Under-Secretary of State
for External Affairs

cc: The Deputy Minister of Fisheries,
Ottawa.

Tyler Thompson, Esq.,
Minister,
United States Embassy, Ottawa.

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FET

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WASHINGTON 25, D. C.

ADDRESS ONLY THE DIRECTOR, FISH AND WILDLIFE SERVICE

→ WFL

U/FW
JUL 26 1957

JUL 25 1957

Memorandum

To: Mr. W. G. Herrington, Special Assistant to the Under Secretary (U/FW), Department of State

From: Commissioner of Fish and Wildlife

Subject: Charts of waters off Alaska

I have reference to your letter of July 12, 1957, to Assistant Secretary Loffler, regarding certain charts of the waters off Alaska, which we have undertaken to prepare for the Government of Canada.

The charts are now being prepared in the Bureau of Commercial Fisheries of this Service. Since considerable work is involved and since the press of other duties has been unusually heavy recently, it is unlikely that the charts will be available for transmittal to Canada before the end of September.

Arnie J. Suomela
Commissioner

By: D A Jaunzen
Acting

3399

Office Memorandum • UNITED STATES GOVERNMENT

To : Mr. Herrington

DATE: September 6, 1957

FROM : Mr. Looney WFL

SUBJECT: Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

This, however, is not only an irrational way of giving a chart to a foreign country but it does not answer Clark's request. Clark's request (attached) is for "a chart showing the definitive lines of the seaward limits of the waters of Alaska". Our request of Fish and Wildlife Service was precisely the same.

It appears that there will be considerable work in correcting these charts in almost any way. Since considerable time has passed and Clark is apparently eager to get them, I suggest we sit down and figure out the most expeditious way we can rectify this.

Enclosure:

Correspondence re charts.

Amend with Pacific Ocean

U/FW:WFLooney:aa

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Wm C. Herrington DATE: August 29, 1957

FROM : Warren F. Looney WFL

SUBJECT: FAWS Charts of Waters of Alaska for transmittal to Canada

From the attached memorandum from Mr. Suomela of August 27 you will see that the charts are here and ready for transmittal.

However, I call your attention to the rather unfortunate title of the overlays, the "Proposed Base Line from which to Measure the Three-Mile Limit for Fishery Regulations".

UCH
WFL

IN REPLY REFER ONLY TO THE DIRECTOR, FISH AND WILDLIFE SERVICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WASHINGTON 25, D. C.

U/FW
AUG 28 1957

AUG 2 7 1957

Memorandum

To: Mr. W. C. Herrington, Special Assistant to the Under Secretary (U/FW), Department of State

From: Commissioner

Subject: Charts of waters off Alaska

Reference is made to your letter of July 12, 1957, to Assistant Secretary Leffler and Mr. Janden's memorandum to you of July 25, 1957, subject as above.

I am happy to inform you that it has been possible to complete preparation of the subject charts earlier than was anticipated. I enclose for transmittal to the Canadian authorities, if you deem it appropriate, two sets of navigational charts of the waters of Alaska together with overlays showing the base lines used to determine the extent of the "waters of Alaska" for the purposes of Section 101.19 of 50 CFR.

You will understand that neither these base lines nor the line delimiting the seaward extension of the "waters of Alaska" bears any relationship to lines delimiting the territorial waters of the United States. These lines are drawn solely for the purpose of fishery management.

Arnie J. Suomela

Enclosures

Mr. Harrington September 6, 1957

Mr. Looney

Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

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Enclosure:

Correspondence re charts.

U/FW:WFLooney:aa

In reply refer to
U/FW

July 29, 1957

Amend
No Pac
Act

Dear George:

I have delayed acknowledging your letter of June 25 in the expectation that when doing so I could send along the requested charts showing the definitive line demarcating the seaward limits of the "waters of Alaska" as this expression is used in the Alaska Fishery Regulations. However, I am now informed by our Fish and Wildlife Service that the pressure of other work will delay completion of the charts and therefore I send this interim reply. The charts in question should be ready sometime this Fall at which time they will be promptly forwarded to you.

I can think of nothing left to be done to complete Canada's part of the agreement at the Seattle Conference.

Sincerely yours,

Wm. C. Harrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

The Honorable
George R. Clark,
Deputy Minister of Fisheries,
Ottawa, Canada.

U/FW:FETaylor:ja

Copy

713488

June 25, 1957.

Mr. W. C. Herrington
Special Assistant for Fisheries
and Wildlife to the
Under-Secretary of State
Department of State
Washington, D.C.

Dear Mr. Herrington:

Re Seattle Conference on Co-ordination of Fisheries Regulations

In reading over the Summary Proceedings of the above Conference, I note that on page 7, paragraph 4, reference is made to an agreement to submit a chart showing the definitive lines of the seaward limits of the waters of Alaska.

In order to complete our record I would appreciate receiving the chart in question as soon as possible. I would also be most happy if you would let me know whether there is anything we have overlooked on our part required to complete the agreement.

Yours very truly,

G. L. Clark
Deputy Minister

611426/6-2557

DEPARTMENT OF STATE INSTRUCTION
UNCLASSIFIED
(Security Classification)

FOR DC USE ONLY

NO. A-98 September 27, 1957

SUBJECT: Regulations and charts concerning oceanic salmon fishing.

TO: The American Embassy, OTTAWA

Two copies each of Public Law 85-114 approved July 24, 1957 and the regulations issued by the Secretary of the Interior on July 25, 1957 under that law are enclosed. P.L. 85-114 amends the North Pacific Fishery Act of 1954 by extending the area of the North Pacific Ocean in which the Secretary of the Interior may issue certain fishing regulations. The regulation of July 25, 1957, issued under authority of P.L. 85-114, prohibits salmon fishing by United States nationals except by trolling in certain areas of the North Pacific Ocean.

There are being transmitted under separate cover two sets of charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based. The charts were requested by Mr. G. R. Clark, Deputy Minister of Fisheries of Canada, and were prepared by the Fish and Wildlife Service of the Department of the Interior.

The Embassy is requested to forward the charts together with the enclosures to Mr. Clark.

DULLES

Enclosures:

1. Two copies P.L. 85-114.
2. Two copies regulations.

31

SEP 27 1957 P.M.

UNCLASSIFIED
(Security Classification)

DRAFTED BY: U/FW:WFLooney:aa 9/26/57 | APPROVED BY: Wm. C. Herrington

CLEARANCES: BNA

311.423/9-2757

PX 118

No. 72/11--

United States of America

DEPARTMENT OF STATE

To all to whom these presents shall come, Greeting:

I Certify That the document hereunto annexed contains true copies from the files of the Department of State, as follows:

1. Letter from the State of Alaska, dated April 29, 1965 to the Department of State objecting to four Soviet trawlers sighted in waters claimed by the State of Alaska, namely the Shelikof Strait;

2. Letter from the Department of State to the Governor of Alaska dated May 14, 1965 (in reply to the above letter) stating that the United States Government has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait outside the 3-mile limit on either side of the Strait;

3. Letter from the Department of State to the Governor of Alaska, dated May 6, 1965, advising that this interim reply is made to the Governor's letter of April 29;

4. Inter office

4. Inter office memorandum dated May 13, 1965 concerning the wording to be used in replying to Governor Egan of Alaska.

In testimony whereof, I, John N. Irwin II,

Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this seventh

day of January, 19 72.

John N. Irwin II
Acting Secretary of State.

By [illegible]
Authentication Officer, Department of State.

U.S. GOVERNMENT PRINTING OFFICE 16—[illegible]-7

WILLIAM A. EGAN
GOVERNOR

58 09.2 N.
151 46.3 W

M/FW
MAY 3 1965

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 29, 1965

Mr. William C. Herrington
Special Assistant for Fisheries & Wildlife
to the Under Secretary of State
515 2nd Street, N. W., Room 401
State Annex 11
Washington 25, D. C.

Dear Bill:

A potentially explosive situation is developing. On April 27, 1965, the Department of Fish and Game sighted four Soviet trawlers within Shelikof Strait near Shuyak Island at 11:40 a.m., Kodiak time. These vessels were again sighted between 3:30 to 4:30 p.m., by the Department and the U. S. Coast Guard. At this time two of the vessels had departed eastward from Shelikof Strait and the other two were heading north along Shuyak Island as if they too were leaving.

The vessels were identified on the 3:30 flight as:

SRTM 8403 at 152° 40'W, 58° 35'N heading North.
SRTM 8423 at 152° 35'N, 58° 45'N heading East.
SRTM 8401 at 151° 50'W, 58° 40'N.
SRTM 8406 at 151° 50'W, 58° 40'N.

Identification was not made at the 11:40 a.m. sighting, however, one vessel was anchored 2-3 miles off Shuyak Island at 152° 40'W by 58° 30'N. The other three vessels were about eight miles off Shuyak Island in the vicinity of 152° 50'W by 58° 35'N. Two of these appeared to be fishing. The hammer and sickle could be seen on all four vessels.

In view of the claims to these waters by the State of Alaska which have not been denied by the Federal Government and the intense feeling of all Alaskans regarding this, a potentially explosive situation exists if the Soviets continue to invade the waters of Shelikof Strait. It would be appreciated if you would take the necessary steps to so notify the

Soviet authorities and request that their fishing vessels refrain from entering the internal State waters of Shelikof Strait. These waters are generally recognized as extending from the tip of the Kenai Peninsula extending to the northeasterly tip of Shuyak Island thence down the shoreline of the Kodiak group and thence across the Strait from Cape Ikolik to Kilokak Rocks.

I would like to be advised of the results of action you take.

Sincerely,

Bill

William A. Egan
Governor

WILLIAM A. EGAN
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

M/FW
MAY 3 1965

April 29, 1965

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Special Assistant for Fisheries & Wildlife
to the Under Secretary of State
515 2nd Street, N. W., Room 401
State Annex 11
Washington 25, D. C.

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In view of the claims to these waters by the State of Alaska which have not been denied by the Federal Government and the intense feeling of all Alaskans regarding this, a potentially explosive situation exists if the Soviets continue to invade the waters of Shelikof Strait. It would be appreciated if you would take the necessary steps to so notify the

Soviet authorities and request that their fishing vessels refrain from entering the internal State waters of Shelikof Strait. These waters are generally recognized as extending from the tip of the Kenai Peninsula extending to the northeasterly tip of Shuyak Island thence down the shoreline of the Kodiak group and thence across the Strait from Cape Ikolik to Kilokak Rocks.

I would like to be advised of the results of action you take.

Sincerely,

Bill

William A. Egan
Governor

May 14, 1965

PERSONAL

Dear Bill:

I am writing with regard to your letter of April 29 on Shelikof Strait, which was acknowledged by Fred Taylor on May 6.

I am informed here that the United States Government has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait or enunciated doctrine there outside of the three-mile belt of territorial sea along the coasts on either side of the Strait. In view of this, I am sure you appreciate that any approach we might make to the Soviets on this matter would have to be based solely on considerations of public sentiment giving rise to a request that they voluntarily refrain from sending their vessels into these waters in order not to upset existing fisheries relationships.

In my opinion an official approach along these lines would almost inevitably require this Government, perhaps in response to inquiries from the USSR, to take a public position concerning the status of the waters of Shelikof Strait. This could be to Alaska's disadvantage with both the Soviets and the Japanese and might even have the effect of stimulating foreign fishing in these waters.

It occurs to me also that a request along the lines you suggest might be against our interests in connection with the renewal of the king crab conflict agreement and other important matters on which we need Soviet cooperation.

The Honorable
William A. Egan,
Governor of Alaska,
Juneau, Alaska.

In view of these considerations it appears to me that the disadvantages of making a move at this time are such as to indicate delay pending further assessment of the situation as it develops. It may be that the incident will not be repeated. Meanwhile, I shall be further considering how we might handle this matter and expect to be in further touch with you.

Sincerely yours,

Wm. C. Herrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

Clearances:

L/SFP - Mr. Yingling (subs)

SOV - Mr. Woods (subs)

M/FW:SBlow:mjb 5/14/65

560-731 O - 75 - 18

May 6, 1965

Dear Governor Egan:

In Mr. Harrington's absence on business I am acknowledging the receipt of your letter of April 29 regarding the sighting of four Soviet trawlers near Sitgak Island on April 27. We will take up the subject of your letter with Mr. Harrington immediately upon his return next week and will be in further touch with you.

At first glance we see a number of problems in connection with the request you make. These have to do with political and legal matters, as well as fisheries questions. You may be sure, however, that we understand your problem in this regard and wish to assist in any practicable way.

Sincerely yours,

Fred H. Taylor
Deputy Special Assistant
for Fisheries and Wildlife
to the Under Secretary

The Honorable
William A. Egan,
Governor of Alaska,
Juneau, Alaska.

Clearances: L/SFP - Mr. Yingling (draft)
SOL - Mr. Morgan (draft)

M/FW:SBlow:mjb 5/6/65

DEPARTMENT OF STATE
THE LEGAL ADVISER

May 13, 1965

MEMORANDUM

M/FW
MAY 13 1965

TO: M/FW - Mr. Stuart Blow

FROM: L/SFP - Raymund T. Yingling

It is suggested that the following be used in answer to the substantive part of Governor Egan's letter of April 29, 1965.

> The United States has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait or exercised dominion there outside of the 3-mile belt of territorial sea along the coasts on either side of the Strait. On the other hand, there has been little, if any, foreign fishing in the waters of the Strait. In such circumstances it would not appear to be in the interest of United States fishermen for the United States Government to have to take a public position concerning the status of the waters of Shelikof Strait which might have the effect of stimulating foreign fishing in such waters.

L:L/SFP:RTYingling:edk

THE UNDER SECRETARY OF STATE
WASHINGTON

PX 121

December 22, 1971

Dear Governor Egan:

Thank you for your letter of August 31, 1971 to President Nixon regarding the territorial limits of Alaska and the provisional maps published by the United States showing boundaries for the territorial sea, the contiguous zone and certain internal waters.

These maps, covering the entire coast of the United States, were drawn up and published in response to the Coast Guard's need for charts for guidance in enforcement activities, the requirements of several other Federal agencies, including the Departments of Commerce and Justice, and the requests of foreign governments.

The drawing of these boundaries involved considerations which are fundamental to the policy of the United States Government on the international law of the sea. Accordingly, overall responsibility for the project was given to the Law of the Sea Task Force -- an interagency group composed of representatives of the Departments of Commerce, Defense, Interior, Justice, State and Transportation -- which directed that the lines be drawn in a manner consistent with the provisions of the Convention on the Territorial Sea and the Contiguous Zone and long-standing U.S. policies concerning the interpretation of that Convention. An interdepartmental committee, operating under the authority and direction of the interagency Task Force, then performed the technical task of drawing the precise lines reflected on the maps.

The Honorable
William A. Egan,
Governor of Alaska,
Juneau.

With [illegible] reference to straight baselines, the United States has always avoided their use for reasons related to our national security and, more recently, to the current negotiations on the law of the sea. The President's Oceans Policy recognizes the basic national security objectives involved in our international law of the sea efforts, and those objectives are foremost in the consideration of policy such as that concerning the drawing of maritime boundaries. In particular, the Executive Branch has considered the preservation of freedom of navigation and overflight in ocean areas a matter of utmost importance, and we have thus consistently avoided any action which would encourage expanded jurisdictional claims in such areas by other countries. Straight baselines have been misused by many countries to enclose significant parts of the high seas. The United States has consistently avoided any use of straight baselines in order not to undermine our refusal to accept them as used by other countries, and in order to avoid encouraging other countries to expand their claims to the high seas.

The maps published in April of this year were thus produced in accordance with carefully developed policy. However, each map bears the caveat that the lines are provisional and are subject to change through amplification or revision of the underlying data or a reinterpretation of the legal principles involved. We have not precluded a change of policy but it should not be thought that our present policy, which the U.S. Government has followed consistently over the years, was determined lightly.

We would be happy to consider any suggestions and recommendations that you or others may wish to make on the policies we have followed and particularly their specific application in connection with the maps that have been issued. In this connection, in your letter you also raised the question of historic bays. Article 7(6) of the Convention on the Territorial Sea and the Contiguous zone refers to such bays. In order to meet the international standard as a historic bay, the following conditions must be met:

(1) there must have been an open, notorious and effective exercise of authority over the bay by the coastal nation;

(2) that exercise must have been continuous;

(3) the exercise must have had the acquiescence of foreign nations.

If you believe that any Alaska bays satisfy those requirements, we would welcome receiving a statement of your views and all relevant supporting information. The Law of the Sea Task Force will review the situation with respect to any particular bay in light of relevant information you may wish to submit.

You suggested in your letter that actions were taken in violation of the National Environmental Policy Act. The Alaskan fisheries are, indeed, an important national resource of this country. However, the Department does not believe the issuance of these maps per se amounts to a "major Federal action significantly affecting the quality of the human environment" within the meaning of the Act. Because, from the point of view of the Department of State, the drawing of the maps involved no change in any policy, no consideration was given to the possible need for an environmental impact statement. The Task Force, in consultation with the Council on Environmental Quality, is now considering the need for such statements in connection with any Federal regulatory, conservation or other actions which may be related to these maps.

As you have noted, some of the boundaries delimited on the maps have been the subject of disputes between the Federal Government and the State of Alaska; there are other areas in which disputes may arise in the future. Although these maps do reflect the position of the Federal Government it was not our intention to foreclose the possibility of changing this position in the future. It was for this reason among others that the caveat was placed on the maps. Accordingly, we would be happy to consider any information that you would wish to present

to determine whether or not the United States position should be changed. It is our hope that through this exchange of information and views it would be possible to foreclose the possibility of future disputes.

The Department understands and shares your desire to protect the valuable Alaskan fisheries, and we will cooperate with you in every way consistent with the overall interests of the United States. As you know, we are also working in the international forum of the United Nations Seabed Committee and bilaterally with a number of countries to solve problems concerning the oceans, including the major difficulties involved in conservation and the effective utilization of fisheries resources. We shall make every effort to see that these issues are resolved in a way that benefits the entire United States and its fishing industry.

Should you wish to have your staff work on this matter with Mr. John R. Stevenson, the Legal Adviser of the Department of State and head of the interagency Law of the Sea Task Force, he will welcome a call from them. His office number is 202-632-9598. I have asked Mr. Stevenson to keep me informed of further developments.

Sincerely,

John N. Irwin II

DX AM

Office Memorandum • UNITED STATES GOVERNMENT

886 - 04

TO : Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska

DATE: January 20, 1960

FROM : Acting Chief, Division of Resource Management

SUBJECT: Request by Alaska Department of Fish and Game for base-line charts describing the waters of Alaska

In your memorandum of January 11, you indicate that you have an extra set of overlays showing the base-lines as the Bureau has interpreted the Federal regulation defining the waters of Alaska. Since the State regulation is identical, we see no reason why these overlays should not be turned over to the State as requested.

For your information, as soon as the State regulations have been made public, it is our intention to redraft the definition section of Part 130 to include the same description so as to indicate the waters outside of which Federal regulations will continue to apply.

John I. Hodges

Correspondence regarding 3-Mile Limit Overlay
Scudder Line - 1960.

Director, Bureau of Commercial Fisheries, FWS, Washington, D. C.

January 11, 1960

Regional Director, Bureau of Commercial Fisheries, FWS, Juneau, Alaska

Request by Alaska Department of Fish and Game for copy of base-line charts delineating waters of Alaska

Attached for your information is a copy of a letter from Commissioner Anderson, ADF&G, requesting copies of charts submitted to Canada outlining the base-line from which "waters of Alaska" were determined in applying federal fisheries laws to U.S. nationals in Alaska.

Inasmuch as Alaska now is responsible for enforcing its own regulations and is, of course, concerned with the problems which led to our submission of such charts to Canada, I can see no objections to providing a copy to Commissioner Anderson.

We have an extra set of "overlays" showing the base-lines, such as we submitted earlier to Washington and thence to Canada, which can be made available to the State.

Since this subject was developed through the State Department, I am requesting your approval before providing Mr. Anderson with a copy.

JOHN T. CHARRETT

Attachment

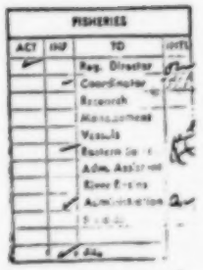
JTCharrett:jh

BOARD OF FISH AND GAME
RICHARD LANSON, JR., CORDOVA
CHAIRMAN
ARNOLD BROWER, POINT BARROW
OSCAR DYSON, KODIAK
ARTHUR H. HAYS, FAIRBANKS
ROBERT I. MARTIN, HAINES
DAN S. ROSS, ANCHORAGE
ROY S. SELFRIDGE, KETCHIKAN
ERLING STRAND, PETERSBURG

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
229 ALASKA OFFICE BUILDING JUNEAU, ALASKA
C. L. ANDERSON, COMMISSIONER

STATE OF ALASKA
WILLIAM A. EGAN
GOVERNOR

January 8, 1960



FISHERIES			
ACT	INF	TO	INITL
✓		Reg. Director	
	✓	Coordinator	
		Research	
		Management	
		Vessels	
	✓	Eastern Sec'y	
		Adm. Assistant	
		River Ensign	
	✓	Administration	
		[illegible]	
	✓	File	

copy to Director
Wash D.C.
Done 1/11/

Mr. John Charrett, Regional Director
Bureau of Commercial Fisheries
U.S. Fish and Wildlife Service
Box 2481
Juneau, Alaska

Dear John:

It has been brought to my attention that you have prepared charts delineating the extent of the marginal seas for control of United States nationals. These were given to Canada during the recent discussions relative to fishing boundaries. I am sure that these charts would be of use to the State and wondered if a set could be made available to us.

Sincerely,

ALASKA DEPARTMENT OF FISH AND GAME

Andy

C. L. ANDERSON, Commissioner

CLA-WK:kp

January 29, 1960

Mr. C. L. Anderson, Commissioner
Alaska Department of Fish and Game
229 Alaska Office Building
Juneau, Alaska

Dear Andy:

In response to your request of January 8, 1960, I am sending under separate cover, overlays of charts delineating the base-line along the Alaska coast from which we established the "Waters of Alaska" as defined in the Bureau of Commercial Fisheries Code, section 101.29, which was effective prior to transfer of management responsibilities to the State.

We have only one set of original charts showing such base-line from which the overlays are traced. We will keep these on file and make them available should you wish to inspect them. In drawing this base-line we believe that we have included all existing Alaska along shore salmon net fisheries.

This information was submitted to Canada upon their request for information concerning section 130.10 of our regulations, and was submitted with the explanation that this was the manner in which the regulations applied to U.S. fishermen. We definitely avoided any reference to International or Territorial waters.

I might add that we have not had occasion to make any arrests for violation of these regulations.

If you have any further questions on this matter, I will be pleased to discuss them with you.

Sincerely,

John T. Charrett
Regional Director

cc: Director, BCF, Washington, D.C.

JTCharrett:jh

DX AN

[illegible] 2 AAC 21.100
5 AAC 21.200

CHAPTER 21. COOK INLET-RESURRECTION BAY AREA.

Article
1. Description of Area (5 AAC 21.100)
2. Fishing Districts, Subdistricts, and Sections (5 AAC 21.200)
3. Salmon Fishery (5 AAC 21.310 - 5 AAC 21.350)
4. Bottom Fish Fishery (5 AAC 21.410)
5. Smelt Fishery (5 AAC 21.510)
6. Herring Fishery (5 AAC 21.610 - 5 AAC 21.650)
7. Shellfish Fishery (5 AAC 21.710 - 5 AAC 21.792)
8. Freshwater Fishery (5 AAC 21.850 - 5 AAC 21.880)
9. Subsistence Fishery (5 AAC 21.910 - 5 AAC 21.992)

ARTICLE 1. DESCRIPTION OF AREA.

Section
100. Description of area

5 AAC 21.100. DESCRIPTION OF AREA. The Cook Inlet-Resurrection Bay area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren Islands.

Authority: AS 16.05.250(2)

ARTICLE 2. FISHING DISTRICTS, SUBDISTRICTS AND SECTIONS.

Section
200. Fishing districts, subdistricts and sections

5 AAC 21.200. FISHING DISTRICTS, SUBDISTRICTS AND SECTIONS. (a) Northern district: north of a line extending from Boulder Point at 60° 46' 23" N. lat., to Shell platform C, then to a point on the west shore at 60° 46' 23" N. lat.

(b) North Central district: between a line extending from Boulder Point at 60° 46' 23" N. lat., to Shell platform C, then to a point on the west shore at 60° 46' 23" N. lat., and the latitude of the marker at the south limit of the closed area at Kasilof River, including the waters adjacent to Kalgin Island.

(c) South Central district: between the latitude of the marker at the south limit of the closed area at Kasilof River and the latitude of Anchor Point light, excluding the waters adjacent to Kalgin Island.

(d) Southern district: south of a line extending from Anchor Point to 59° 46' 15" N. lat., 153° 00' 39" W. long., and north and east of a line extending from the aforementioned latitude and longitude to Point Adam, including all of Kachemak Bay.

Fish and Game Regulation 37 (5 AAC 21.100 and 5 AAC 21.200) Chapter 21. Cook Inlet - Resurrection Bay Area. April, 1971, page 5-67.

DX AR

File as
International - Territorial
waters
1920's

Alaska Fishery
Regulation Data
1924 - 1928
14/33:24-2
Container 1 - 57A150

Fishing Jurisdiction Controversy over Tariff Maps (1930).

October 20, 1930.

United States Tariff Commission,

Washington, D. C.

Gentlemen:

My attention has just been called to the fact that in connection with the investigation by the United States Tariff Commission under the terms of Senate Resolution 51d, 71st Congress, 2nd Session, a chart of Alaska has been sent to the Collector of Customs for District No. 31 at Juneau, for distribution to fishery operators along with a schedule which calls for information as to catches on the high seas outside of state or territorial waters and catches within state or territorial waters. It is noted that the schedule makes special reference to this chart.

Examination of the chart shows that a red line has been drawn along the coast, inside of which there is printed in red the words "territorial waters" and outside of which there is printed in red the words "high seas". I note that the red line deeply indents the Alaskan coast just north of Dixon Entrance, Chatham Strait, Yakutat Bay, Cook Inlet, Nushagak Bay, and Kvichak Bay.

I notice also the statement on the chart that the line between the high seas and territorial waters was drawn by the United States Tariff Commission for the sole purpose of facilitating the conduct of the investigation mentioned and is not to be regarded as having official sanction or significance for any other purpose.

In my opinion, the designation on this chart of territorial waters and high seas may prove exceedingly harmful and detrimental to American fisheries industry. In spite of the statement that the chart has no official sanction or significance in respect to what constitutes high seas or territorial waters, it seems to me that it is, in effect, an invitation to foreign fishery interests to invade waters which heretofore have always been considered as open only to nationals of the United States.

I refer particularly to the grave situation which may arise because of Japanese vessels fishing for salmon in the waters of Kvichak Bay and Nushagak Bay. Kvichak Bay produces from five to ten million dollars' worth of salmon each year and practically all of the catch is made by American fishermen in waters shown on the chart as the high seas. Also salmon worth more than a million dollars are caught each year in Nushagak Bay in waters which are indicated as a part of the high seas.

Under this situation there is nothing to prevent Japanese floating canneries from anchoring in the waters of Kvichak Bay or Nushagak Bay and competing with American fishermen. It is easy to see what great damage thus could be done to American industry in these waters. That the Japanese already have their eye on this field is evidenced by the fact that a large floating cannery was anchored twenty miles off the Alaskan Peninsula in the vicinity of Port Moller during the summer of 1930 engaged in the packing of crabs. Another smaller Japanese vessel put into Dutch Harbor, Alaska, for fresh water on its way to Tokyo early last month, and was detained by a Coast Guard vessel. It developed that the catch was small and of an experimental nature, and as track charts and other evidence indicated that the catch was made fifteen or more miles offshore, the vessel was released.

Under the circumstances, I wish to request that every effort be made by the United States Tariff Commission to withhold the issuance of the Alaska chart referred to herein. If any copies of it fall into the hands of Japanese fishery interests or into the hands of Canadian fishermen, great harm may result to American industry.

Your cooperation in this matter will be greatly appreciated.

Very sincerely,

R P Lamont

Secretary of Commerce.

WTB-CC

Oct 20/30

October 31, 1930.

Mr. Henry P. Fletcher,
Chairman, United States Tariff Commission,
Washington, D. C.

Dear Mr. Fletcher:

Referring to your letters of October 28 and October 28, I desire to express my appreciation of your prompt action in ordering the complete withdrawal of the maps prepared by the Coast and Geodetic Survey for use in connection with the Tariff Commission's statistical review of the fisheries of Alaska. This course of action will avoid any possible complication or embarrassment had the maps been made public.

At the request of the Coast and Geodetic Survey, the Commissioner of Fisheries several days ago directed that copies of the maps which had been sent to the offices at Seattle, Washington, and Juneau, Alaska, be returned promptly so that they might be forwarded to the Coast and Geodetic Survey, together with several copies of the maps retained in the office of the Commissioner of Fisheries. The records of the Coast and Geodetic Survey show that eleven copies of the maps were furnished the Bureau of Fisheries. All of these in due time will be forwarded to the Coast and Geodetic Survey so that they may be turned over to the Tariff Commission.

Very sincerely,

(Sgd) R. P. Lamont
Secretary of Commerce.

WTB-CS

UNITED STATES TARIFF COMMISSION
WASHINGTON

CHIEF CLERK
DSO OCT 30 AM 9 08

HENRY P. FLETCHER
Chairman

FISHERIES
OCT 30 1930

COMMISSIONER
FISHERIES

October 28, 1930

My dear Mr. Secretary:

Further reference is made to your letter of October 20 calling the commission's attention to a possible misunderstanding which might result from the distribution of maps prepared by us for use in certain sections of Alaska in connection with our study of Alaskan fisheries.

In compliance with your request the commission has instructed the Collector of Customs at Juneau to return all the maps in his possession to the commission, where they will be destroyed together with all others on hand here. The Government Printing Office and the Coast and Geodetic Survey have also been instructed to destroy the plates from which the red line and the disclaimer on the maps were printed, and all of the maps which were not delivered to the office of the commission.

The Coast and Geodetic Survey has informed us that on verbal request from the office of the Commissioner of Fisheries, they have mailed to the representative of that bureau at Juneau two copies of these maps, and have delivered to the office of the Commissioner of Fisheries, four copies. May we request, therefore, that these maps also be returned to this office for destruction, inasmuch as the commission feels that unless all of the maps are returned to this office, it can not be held responsible for the use which might be made of them.

Sincerely yours,

Henry P. Fletcher,
Chairman.

The Honorable
The Secretary of Commerce,
Washington, D.C.

569-731 O - 75 - 19

UNITED STATES TARIFF COMMISSION
WASHINGTON

HENRY P. FLETCHER
CHAIRMAN

CHIEF CLERK
DEC OCT 23 AM 9 50

October 22, 1930.

My dear Mr. Secretary:

Your letter of October 20 has been received in regard to possible misunderstandings which might arise in connection with the Alaskan fishing industry if proposed maps, in which there is a tentative demarkation between "territorial waters" and "high seas", should be distributed among Alaskan fisheries.

The Commission can readily understand how the distribution of these maps might cause embarrassment to your Bureau of Fisheries and it has accordingly requested the Collector of Customs at Juneau, Alaska, to withhold distribution of them.

Meanwhile representatives of the Commission are in touch with the Bureau of Fisheries for the purpose of working out detailed plans for obtaining the information desired by the Commission without the use of the maps referred to.

The Commission appreciates the spirit of cooperation which your Bureau of Fisheries has shown in connection with this investigation.

Sincerely yours,

Henry P. Fletcher,
Chairman.

The Honorable,
The Secretary of Commerce,
Washington, D. C.

DX 8E

WESTERN UNION TELEGRAM

MAY 28, 1924

129 FY LD 48

CHICAGO ILL T55P

HENRY OMALLEY

COMMISSIONER OF FISHERIES DEPARTMENT OF

FISHERIES WASHINGTON DC

OUR CAPTAIN HALIBUT BOAT ZAPORA WIRES FISH COMMISSIONER WILL NOT ALLOW HIM FISH FOR HALIBUT IN COOKSINLET WITHOUT PERMIT FROM YOUR DEPARTMENT ALL OTHER FISHING GROUNDS COVERED BY OTHER SCHOONERS AND WE RESPECTFULLY REQUEST PERMIT FISH COOKINLET AS OTHERWISE WILL INCUR SUBSTANTIAL DAMAGE AND LOSS TO THIS COMPANY

P L SMITHERS

MSH - 17

May 28, 1924.

P. L. Smithers,
Booth Fisheries Company,
Chicago, Illinois.

Have telegraphed Studdert at Seldovia to issue local permit authorizing Zapora fish for halibut in Cook Inlet.

O'Malley.

WESTERN UNION TELEGRAM

1924 MAY 25 AM 6 42

CC102 24 GOVT COLLECT NL VIA SEATTLE

SELDOVIA ALASKA 28

BUREAU FISHERIES

WASHINGTON DC

BOARDED BOOTH FISHERIES STEAMER ZAPORA AND NEW ENGLAND FISH
COMPANY STEAMER NEW ENGLAND TODAY FINDING BOTH FISHING
HALIBUT IN COOK INLET WITHOUT PERMITS

STUDDERT.

MSH - 17

May 28, 1924.

Studdert, Fisheries agent,
Seldovia, Alaska

Master Zapora wires you will not allow him fish for halibut Cook Inlet without permit from Department (stop) You should issue permit immediately.

O'Malley.

Copy to Seattle office.

DX BF

DEPARTMENT OF COMMERCE
BUREAU OF FISHERIES

1924

MONTHLY REPORT OF VESSELS.

Name of vessel U.S.F.S. Kittiwake Month of May 192[illegible]

Prepared at Anchorage on June 3 192[illegible]

Vouchers submitted as per list on attached sheet $ 715.81

Vouchers previously reported $ 5237.30

Total to date, $ 5953.11

Outstanding liabilities for which vouchers have not been submitted $

Number of days on which vessel was running 22 Total number of hours 163.50

Maximum running time one calendar day 18 hrs. 5 min. Average hours per day 7.431

Hours consumed on longest continuous run 124

Total number nautical miles run 55.09 Maximum miles run one calendar day 7.0645

Average miles run per day Average miles per hour 17 Gals

Fuel used in running 490 Gals Diesel Oil 13 Gals Gas Lubricating oil used, total 66 Gals Diesel Oil 4 Gals Gas .0133

Fuel used not running 556 Gals Diesel Oil 17 Gals Gas Lubricating oil used per mile $6.97

Fuel used, total 42.41 Lubricating oil cost, total .41

Oil used, total cost Diesel Oil .07 Gas .205 Lubricating oil cost per gal .0054538

Fuel cost per gallon or ton .03318 Lubricating oil cost per mile

Fuel cost per mile

Report of operations on attached sheet.

Report of voyage ("Eider" only) on attached sheet.

General report ("Eider" only) on attached sheet.

Mess report ("Eider" only) on attached sheet.

R. L. Cole

Master.

This report is to be prepared promptly at the end of each month.
Alaska vessels: One copy is to be retained; the original and three copies are to be sent to the officer in charge of district, who will retain one copy, initial and forward the original and two copies to the Seattle office, which will retain one copy and forward the original and one copy to the Bureau in Washington, D. C.
Other vessels: One copy to be retained and original forwarded to Bureau.

Log of U.S.F.S. Kittiwake, May 1924.

2

Name of vessel U.S.F.S. Kittiwake Report of operations for month of May, 1924

General remarks (to include synopsis of work done, recommendations, changes in personnel, accidents, etc.).

Completed trip from Cordova to Cooks Inlet via Seward. Leaving Port Henry May 1 On arrival at Port Graham (Cooks Inlet) May 2, vessel was put on beach and copper painted. Propeller and rudder inspected. The iron shoe holding rudder was found to be badly eaten by galvanic action. Iron shoe was removed and new piece installed for temporary use only. Template was made for having piece cast of bronze to replace the iron.

Calls were made in Cooks Inlet at the following places: Port Graham, Seldovia, English Bay, Halibut Cove, Fox Creek, Anchor Point, Kachemak, Kenai River, East Foreland, Anchorage, Shorty Creek, Tyonek, Snug Harbor, Polly Creek, and Seldovia River. Boarded Halibut steamer Zapora and New England fishing in Cooks Inlet.

Names of employees of Bureau transported, other than crew, and periods aboard:

C. P. Studdert, aboard May 5th to 31st inclusive.

Other persons transported (give names, places, and dates):
Dan Patterson, aboard 11 A.M. May 12 to 3:05 P.M. May 15, Anchorage to Seldovia via Kenai.
Miss Anderson and Mrs. Simpson, aboard 7:30 A.M. to 9:20 A.M. May 16th Port Graham to Seldovia.
Dan Patterson, aboard 11 A.M. May 16th to 12:26 P.M. May 17th, Seldovia to Halibut Cove and return. V. L. Waller and Dick Gray, aboard 11:20 A.M. to 6:30 P.M. May 16th, Seldovia to Anchor Point, via Halibut Cove. Harold Johnson, aboard 8:40 A.M. May 19th to 12:35 A.M. May 31st., Port Graham to Anchorage.
Dan Patterson aboard 11:20 A.M. May 19th to 12:35 A. M. May 21st, Seldovia to Anchorage

R. L. Cole
Master.

3

Name of vessel U.S.F.S. Kittiwake

Vouchers forwarded to office during month of May, 1924

Classifications are—
(a) "Maintenance." To include minor routine repairs, replacing worn out or lost equipment, fuel for galley, painting, stores such as tools, light, oil, waste, packing, water, linen, belting, laundry, etc. (b) "Fuel." (c) "Wages." (d) "Repairs." General overhauling or repairs of some magnitude. (e) "Equipment." *Additions* to equipment only. (f) "Subsistence."

REQ. No.	PAYEE.		CLASSIFICATION.	AMOUNT.
1924				
4/5	Pacific Marine Supply Co.	Seattle	Maintenance	30.51
4/1	Union Gas Engine Co.	San Francisco	"	[illegible].20
4/21	Alaska Transfer Co.	Cordova	"	6.00
L C32761	Pacific Steamship Co.		"	2.80
	Pay Roll			
	R. L.Cole	Master	Wages	160.00
	Eugene H. Mason	Engineer	"	130.00
	Ernest F. Schroeder	Quartermaster	"	90.00
	Thomas Kinney	Cook	"	90.00
	R. L. Cole	Officer of Mess	Subsistence	124.00
			TOTAL.	715.71

Log of the U. S. F. S. KITTIWAKE

Month of May, 1924

1921

May 1	6:21 A. M.	Leave Port Bonny for Cooks Inlet via Seward.
	2:00 P.M.	Arrive Seward, Standard Oil Dock. Take on 1118 Gals, Diesel Oil, 57 Gals. Gasoline, 2-10 lb. Cans Transmission grease, 1250 lbs. Stove Coal. U. S.Forest Service furnished 446 gals Diesel Oil, U. S. Radio, furnished 148 gals Diesel Oilof the above amount.
	4:40 P.M.	Leave Seward. Arrive and anchor at Sunny Cove 6:45 P.M. Distance Run, 72 miles Time run, 9 hours, 44 minutes
May 2	4:10 A.M.	Leave Sunny Cove, Renard Island, Resurrection Bay.
	6:50 A.M.	Stop and drift in passage between Harbor Isd. and Mand to Eastward.
	7:34 A.M.	Under way
	10:15 P.M.	Arrive at Port Graham, make fast at Gas Boat Chacon at dock. Distance Run, 124 miles Time Run, 18 hours, 5 minutes
May 3		At Port Graham, borrowed ten empty drums from the Fidolgo Isd. Pckg.Co. Pumped those drums full of oil from our tanks to light load preparatory to going on beach for copper painting.
	1:30 P.M.	Go on beach alongside grid-iron, listing vessel slightly in shore, making fast to two pilots. Examination was made of propeller and rudder at low water. The extension of brass shoe holding bottom of rudder was found to be iron and badly eaten by galvanic action. The bolts were almost gone and bolt-holes eaten out. A new piece of iron was installed for temporary use. Template made to have new extension made of bronze.
May 4		On beach at Port Graham finished cleaning and copper painting bottom, also renewed iron shoe.
May 5	1:30 A.M.	Came off of beach at Port Graham and made fast to scow at dock. Pumped 4 drums of fuel oil aboard. Took on supplies and water.
	1:30 P.M.	Left Port Graham with Mr. Studdert.
	3:30 P.M.	Arrived Seldovia.
	5:45 P.M.	Left Seldovia
	8:55 P.M.	Anchor Halibut Cove Distance Run 37 miles Time Run 5 hours, 10 min.
May 6	7:25 A.M.	Left Halibut Cove
	4:20 P.M.	Arrived Kenai River, make fast to gas boat Tolovina at N.W. Cannery Dock.
	4:35 P.M.	Left Cannery
	4:42 P.M.	Make fast to Dolphin down river. Distance 85 miles Time Run, 9 hours, 2 min.

Log of the U. S. F. S. KITTIWAKE

Month of May, 1924

May 7	5:15 A.M.	Left dolphin, Kenai River. Went to Libby's Cannery and left Mr. Studdert with Kittiwake Skiff.
	5:55 A.M.	Returned to dolphin.
	11:00 A.M.	Mr. Studdert returned to Kittiwake with skiff and I accompany him to Kenai Village for the purpose of investigating channel and range entering Kenai River.
	2:13 P.M.	Leave dolphin for Kenai River
	10:05 P.M.	Anchor south of railroad dock, Anchorage. Distance Run, 74 miles Time Run 8 hours.
May 8		At anchor, Anchorage
	7:00 P.M.	Weigh anchor and go to railroad dock. Mr. and Mrs. Reid and Mr. Jesson visit ship during the evening
	11:00 P.M.	Anchor in stream.
May 9) 10)		At anchor, south of R.R. Dock.
May 11		At Anchorage
	10:30 A.M.	Haul into dock from stream and receive visitors.
	1:45 P.M.	Move out into stream and anchor.
May 12	11:00 A.M.	Leave Anchorage, Mr. Studdert and Dan Patterson aboard
	11:07 P.M.	Arrived Kenai River and make fast to dolphin Distance Run, 74 miles, Time Run 8 Hrs.,36 minutes
May 13	9:12 A.M.	Leave Kenai River dolphin
	9:30 A.M.	Arrive Libbys Cannery
	11:12 A.M.	Leave Libby's Cannery
	11:30 A.M.	Anchor off Kenai Village Dock, and remain over night Engineer takes off cylinder head and grinds valve in No. 3 cylinder. Distance Run 8miles Time Run, 36 minutes
May 14	9:35 A.M.	Leave Anchorage off Kenai Village Dock
	9:56 A.M.	Arrive Libby's Cannery
	10:00 A.M.	Leave Libby's Cannery
	5:05 P.M.	Arrive Snug Harbor Cannery So'west prevented us from landing at dock. We proceed about 3/4 mile north of the Cannery
	5:20 P.M.	Anchor 7 fathoms, Mud bottom Distance Run, 58 miles Time Run, 7 hours 41 min.
May 15	8:10 A.M.	Leave Anchorage 3/4 mile north of Snug Harbor Canneey
	3:05 P.M.	Arrive Seldovia
	4:45 P.M.	Leave Seldovia

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Page 3 - Log KITTIWAKE

May 15(Cont)	6:40 P.M.	Arrived at Port Graham Cannery Distance Run 63 Miles Time Run,8 hours,50 minutes
May 16	7:30 A.M.	Leave Port Graham
	9:20 A.M.	Arrive Seldovia
	11:00 A.M.	Leave Seldovia
	1:45 P.M.	Arrive Halibut Cove, Anchor abeam Munson House. Miss Anderson and Mrs. Simpson, Port Graham to Seldovia Dan Patterson 4e,Seldovia to Halibut Cove. Distance Run 37 miles Time Run, 4 hours, 20 minutes
May 17	7:50 A.M.	Leave Halibut Cove
	9:50 A.M.	Anive Christensen Fox Ranch. Anchor in 4 fathoms close to shore.
	10:55 A.M.	Leave Christensens
	12:26 P.M.	Arrive Seldovia
	6:28 P.M.	Leave Seldovia
	8:30 P.M.	Arrive Port Graham Cannery Distance Run 40 miles Time Run, 5 hours 33 minutes.
May 18		At Port Graham
May 19	8:40 A.M.	Leave Port Graham
	10:13 A.M.	Arrive Seldovia
	11:20 A.M.	Leave Seldovia
	1:55 P.M.	Arrive Halibut Cove and anchor
	3:10 P.M.	Leave Halibut Cove
	10:00 P.M.	Arrive off Ninilchuk Village, anchor in 2 fathoms.
	11:30 P.M.	Leave Ninilchuk
	12:00 P.M.	3 Miles Northwest of Ninilchuk, enroute Kenai River Distance Run 100 Miles Time Run, 12 hours, 28 min.
May 20	12:00 A.M.	3 Miles Northwest of Ninilchuk Village, enroute Kenai River
	3:20 P.M.	Arrived Kenai River dolphin
	1:20 P.M.	Leave dolphin. Pick up Mr. Studdert, Dan Patterson at Kenai wharf. Leave wharf and proceed up river for Libby's Cannery.
	2:05 P.M.	Arrive Libby's Cannery
	2:25 P.M.	Leave Libby's Cannery
	12:00 P.M.	Off Woronsoff Point, enroute Anchorage
May 21	12:00 A.M.	Off Point Woronsoff, enroute Anchorage
	12:35 A.M.	Arrive Anchorage, anchor south of R.R. Dock, 7 fathoms Distance Run, 4 miles Time Run, 35 minutes
May 22 23)		At anchor south of R.R. Dock, Anchorage.

Page 4 - Log KITTIWAKE

May 24	9:25 A.M.	Leave Knchorage.
	2:35 P.M.	Arrive off Shorty Creek, anchor in 3¾ fathoms
	3:25 P.M.	Leave Shorty Creek
	4:25 P.M.	Anchor off Tyonek Village
	7:30 P.M.	Leave Tyonek
	8:20 P.M.	Arrive Shorty Creek, make fast to pile driver
	8:48 P.M.	Leave Shorty Creek
	12:00 P.M.	Off north point Fire Island and round Anchorage Geo. Bolgh, Shorty Creek and Tyonek Country and return Mrs. Everett and Frank Smith, Tyonek to Anchorage Distance Run 72 miles Time Run, 10 hours, 31 min.
May 25	12:00 A. M.	Off north point Fire Island
	1:10 A.M.	Arrive Anchorage Dock. Mrs. Everett and Mr. Smith go ashore
	1:25 A.M.	Anchor in stream south of R.R. Dock, Anchorage
	12:45 P.M.	Start Weigh anchor
	1:04 P.M.	Leave Anchorage
	4:15 P.M.	Stop Shorty Creek. Deliver telegram to Mr. Gill
	4:23 P.M.	Leave Shorty Creek
	5:15 P.M.	Anchor off Tyonek Village, abreast store building, 5 fathoms Distance Run 49 miles Time Run,5 hours, 52 min.
May 26	1:15 A.M.	Leave Tyonek
	4:15 A.M.	Anchor 3 miles off Kenai River, wait for flood-tide
	6:30 A.M.	Weigh anchor, proceed for Kenai River
	7:15 A.M.	Make fast to dolphin, Kenai River
	6:20 P.M.	Leave dolphin, Kenai River
	8:25 P.M.	Make fast to Libby's pot-scow, 2 miles north of East Forland
	11:43 P.M.	Leave pot-scow, East Forland
	12:00 P.M.	East Forland, enroute Polly Creek Distance Run, 85 miles Time Run, 6 hours, 42 min.
May 27	12:00 A.M.	Off East Forland, enroute Polly Creek
	4:00 A.M.	Slow down and take soundings, and head in for shore where a lot of clam-diggers tents are located, Northeast of Polly Creek
	4:40 A.M.	Anchor 1/8 mile off shore in 2½ fathoms. Mr. Studdert and myself go ashore in skiff. Studdert walks to Polly Creek I return to Kittiwake.
	6:00 A.M.	Leave anchorage northeast of Polly Creek
	6:50 A.M.	Arrive off Polly Creek and anchor in 1½ fathoms
	7:50 A.M.	Leave Polly Creek
	9:50 A.M.	Arrive Snug Harbor Cannery Dock
	10:35 A.M.	Leave Snug Harbor Cannery
	12:40 P.M.	Boarded steamer Zapora, fishing halibut, so'west of anchor point
	12:50 P.M.	Left Zapora
	1:10 P.M.	Boarded steamer New England, also fishing halibut
	1:18 P.M.	Left steamer New England Distance Run 104 miles
	4:35 P.M.	Arrive Seldovia Dock Time 13 hours,35 min.
	9:15 P.M.	Pulled away from dock and anchored in stream

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Page 5 - Log: KITTIWAKE

May 28 8:40 A.M. Leave Seldovia
10:22 A.M. Stop inside of Passage Island (entrance to Port Graham) Mr. Studdert and Q.M. take skiff and row to English Bay Kittiwake proceeds to Port Graham.
11:00 A.M. Arrive Port Graham

Distance Run, 16 miles
Time Run, 2 hours, 20 min.

May 29 9:50 A.M. Leave Port Graham
10:30 A.M. Anchor in English Bay
11:40 A.M. Leave English Bay with Artic Packing Co. scow intow
2:10 P.M. Arrive Seldovia
9:15 P.M. Leave Seldovia
11:58 P.M. Arrive Halibut Cove and anchor

Distance Run, 40 miles
Time Run, 8 hours, 52 min.

May 30 9:13 A.M. Leave Halibut Cove
10:55 A.M. Anchor in 3½ fathoms abreast Clark's ranch (Kachemak Bay) Mr. Studdert, Q.M. and self go ashore in skiff to investigate Fox Creek.
10:50 P.M. Leave Anchorage off Clark's ranch
12:00 P.M. Off Glazier Spit, enroute Halibut Cove

Distance Run, 22 miles
Time Run, 2 hours, 52 min.

May 31 12:00 A.M. Off Glazier Spit, enroute Halibut Cove
12:32 A.M. Anchor Halibut Cove
8:01 A.M. Leave Halibut Cove
11:00 A.M. Arrive Seldovia
2:05 P.M. Leave Seldovia
2:20 P.M. Anchor in lee of starboard hand point above Powder Island (Seldovia Bay) Studdert and Mason go up Seldovia River to investigate spawning conditions in this stream
6:20 P.M. Leave anchorage
6:35 P.M. Arrive Seldovia

Distance Run, 30 Miles
Time Run, 4 hours,

Total Distance Run 1278 Miles
Total Time Run, 163.50.

Form 819

DEPARTMENT OF COMMERCE
BUREAU OF FISHERIES

MONTHLY REPORT OF VESSELS.

Name of vessel U.S.F.S. Kittiwake Month of April 1924

Prepared at Anchorage, Alaska, on May 10 1924

Vouchers submitted as per list on attached sheet $ 609.03

Vouchers previously reported $4628.27

Total to date, $5237.30

Outstanding liabilities for which vouchers have not been submitted $

Number of days on which vessel was running 11 Total number of hours 67.50

Maximum running time one calendar day 11 hrs. 28 min. Average hours per day 6.1363

Total number nautical miles run 478 Maximum miles run one calendar day 82

Average miles run per day 43.454 Average miles per hour 7.081

Fuel used in running 188 Gals. Diesel Oil 10 Gals Gas

Fuel used not running 6 Gals. Diesel Oil 17 Gals Gas

Fuel used, total 194 Gals Diesel Oil 27 Gals Gas.

Fuel used, total cost $13.49

Fuel cost per gallon or ton Diesel Oil .0417 Gas. $ .20

Fuel cost per mile .0282

Lubricating oil used, total 7 Gals

Lubricating oil used per mile .014644

Lubricating oil cost, total $2.37

Lubricating oil cost per gal. .41

Lubricating oil cost per mile .006

Report of operations on attached sheet.

Report of voyage ("Eider" only) on attached sheet.

General report ("Eider" only) on attached sheet.

Mess report ("Eider" only) on attached sheet.

R. L. Cole
Master.

This report is to be prepared promptly at the end of each month.

Alaska vessels: One copy is to be retained; the original and two copies are to be sent to the officer in charge of district, who will retain one copy and will initial and forward the original and one copy to the Bureau with or without comment.

Other vessels: One copy is to be retained and original forwarded to Bureau.

11—888

DX BV

Treasury Dated Feb 9 1893

Department of Justice.

Number 1671 1893 Received

File No. 6384 1886 Feb 10 1893

From The Secretary

SUBJECT:

Encs copy of Alaska Herald containing opinion of Judge Truitt in re Ca vs Kodiak, also circular of Jany 19

Charged to Aly

ACTION:

File:

Bx 262

Treasury Department,
Office of the Secretary,
Washington, D. C., February 9, 1893.

The Honorable

The Attorney General.

Sir:-

I have the honor to return herewith, in accordance with the request contained in your letter of the 28th of December last, copy of the Alaska Herald, dated December 12, 1892, containing the opinion of Judge Truitt in the case of the United States vs. the Schooner "Kodiak," seized for the alleged killing of Sea Otter. I also enclose for your information copies of a Circular of this Department, dated the 19th ultimo, concerning the killing of fur bearing animals in Alaska.

Respectfully yours,

Charles Foster

Secretary.

Three enclosures.

AKD

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Letter, Secretary of the Treasury Department to the Attorney General, February 9, 1893.

CIRCULAR.

KILLING OF FUR-BEARING ANIMALS IN ALASKA.

1893.
Department No. 11.
Bureau of Special Agents.

Treasury Department,

OFFICE OF THE SECRETARY,

Washington, D. C., January 19, 1893.

To Collectors and other Officers of the Customs, and to Officers of the Revenue Marine:

Section 1956 of the Revised Statutes of the United States provides that no person shall, without the consent of the Secretary of the Treasury, kill any otter, mink, martin, sable, or fur seal, or other fur-bearing animal within the limits of Alaska Territory or in the waters thereof, and that any person convicted of a violation of that section shall for each offense be fined not less than $200 nor more than $1,000, or be imprisoned not more than six months, or both; and that all vessels, with their tackle, apparel, furniture, and cargo, found engaged in violation of that section, shall be forfeited.

No fur-bearing animal will be allowed to be killed by persons, other than natives, within the limits of Alaska Territory or in the waters thereof.

The killing by anyone of fur seals, except upon the Pribilof Islands by such party or parties as are permitted so to do, pursuant to the terms of a contract between the Government of the United States and such party or parties, is prohibited.

White men married to natives and residing within the Territory will not be entitled to the privilege of natives under this order.

The use of rifles, shotguns, or other firearms by the natives in killing sea otter, or the use of nets in taking them, is hereby prohibited.

No vessel except United States revenue cutters will be allowed to transport parties of natives to or from localities where sea otter are found.

Masters of vessels having on board skins of otter, mink, martin, sable, fur seal, or other fur-bearing animals taken in Alaska or Alaskan waters, before unlading the same shall report to the collector of customs at Sitka, or to a deputy collector at one of the ports of delivery in the district of Alaska, and shall file a manifest thereof and obtain a permit for their transportation if destined for a port in some other collection district, or if destined for a foreign port shall obtain a clearance.

Masters of vessels failing to comply with these regulations will be considered as having violated the provisions of section 1956 of the Revised Statutes, and will be liable to the penalties prescribed therein.

It will be the duty of the officers of the United States who may be in the localities where sea otter, mink, martin, sable, or fur seal, or other fur-bearing animals are taken, or who may have knowledge of any such offense committed, to take all proper measures to enforce the penalties of the law against persons guilty of a violation thereof.

These regulations supersede all others previously in force.

O. L. SPAULDING,
Acting Secretary of the Treasury.

NOTE.—The present ports of delivery in Alaska are Mary Island, Wrangle, Juneau, Sand Point, Kadiak, and Unalaska.

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Treasury Department Circular, "Killing of Fur-Bearing Animals in Alaska," January 19, 1893.

IMPORTANT CASES DECIDED

As reported by "The Alaska Herald" at Sitka, Alaska, Monday, December 12, 1892, Vol 1, No. 25

On last Monday decisions were rendered in the United States Court here, in the cases of the schooners Kodiak, Lottie and the steamer Jennie, seized for alleged killing of sea-otters. Much interest has been felt in these cases as a new and important question is involved. We publish the decision in the Kodiak case in full.

In the United States District Court for the District of Alaska.

The United States,)
vs.)
The Schooner Kodiak.)

In Admiralty, Libel of forfeiture for violation of Section 1956 Revised Statutes.
C. S. Johnson, District Attorney.
A. C. Barry and John S. Bugbee, for claimant.
Warren Truitt, District Judge.

The libel which was filed in this case on the 15th of June, 1892, alleges that the schooner Kodiak, on or about the 6th of June, 1892, was seized by Henry L. Johnson, Commander of the United States steamer Mohican, in Cook's Inlet in the waters of Alaska and within the jurisdiction of this court, and then sets out the case of said seizure as follows:

"That said vessel, her captain, officers and crew, assisted by a large number of natives of Alaska, were at said time unlawfully engaged in killing and did kill fur-bearing animals known as otter, within the limits of Alaska Territory and in the waters thereof, in violation of the provisions of section 1956 of the Revised Statutes of the United States in such cases made andprovided."

This section is as follows: "No person shall kill any otter, mink, martin, sable or fur-seal, or other fur-bearing animal, within the limits of Alaska Territory or in the waters thereof, and every person guilty thereof, shall, for each offense, be fined not less than two hundred nor more than one thousand dollars, or imprisoned not more than six months, or both, and all vessels, their tackle, apparel, furniture and cargo, found engaged in violation of this section, shall be forfeited; but the Secretary of the Treasury shall have power to authorize the killing of any such mink, martin, sable or other fur-bearing animal, except fur-seal, under such regulations as he may prescribe; and it shall be the duty of the Secretary to prevent the killing of any fur-seal and to provide for the execution of the provisions of this section until it is otherwise provided by law; nor shall he grant any special privileges under this section"

After the filing of the libel herein, on June 18th, 1892, the master of the Kodiak, intervening for and in behalf of the vessel, her tackle, apparel, furniture and cargo, appeared and alleged that at the time of the seizure of said property he was in possession thereof, and that it belonged to the Alaska Commercial Company, a corporation duly organized under the laws of California. This company in subsequent proceedings appeared as claimant, and on the 4th day of October, 1892, filed an answer to the libel. In this answer, by failing to deny, it admits the allegations of the libel as to the time, place, manner and authority of the seizure, but denies any violation of theprovisions of section 1956 or any other statute whatever, or the commission of any act which it might not lawfully do under and in pursuance of the authority conferred by regulations of the Secretary of the Treasury of the United States, issued and prescribed on the 21st of April, 1879.

Excerpts from "The Alaska Herald" at Sitka, Alaska, Monday, December 12, 1892, Vol. 1, No. 25.

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The regulations referred to in this answer were issued by Hon. John Sherman, and are given in the following notice or circular:

Treasury Department,
Washington, D.C., April 21, 1879.

"Section 1956 of the Revised Statutes of the United States provides that no person shall, without the consent of the Secretary of the Treasury, kill any otter, mink, martin, sable, or fur-seal or other fur-bearing animal within the limits of Alaska Territory, or in the waters thereof, and that any person convicted of a violation of that section, shall, for each offense, be fined not less than two hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both; and that all vessels, with their tackle, apparel furniture and cargo, found engaged in violation of that section, shall be forfeited. No fur-bearing animal will, therefore, be allowed to be killed by persons other than the natives within the limits of Alaska Territory, or in the waters thereof, except fur-seals taken by the Alaska Commercial Company in pursuance of their lease. The use of fire-arms by the natives in killing otter during the months of May, June, July, August and September, is hreby prohibited. No vessel will be allowed to anchor in the well-known otter-killing grounds, except those which may carry parties of natives to or from such killing-grounds; and it will be the duty of the officers of the United States, who may be in that locality, to take all proper measures to enforce all the pains and penalties of the law against persons found guilty of a violation thereof. White men lawfully married to natives and residing within the Territory are considered natives within the meaning of this order."

John Sherman,
Secretary of the Treasury.

Two principal questions arise in this case:

1. Was the Kodiak, at the time of her seizure, within waters over which the United States had jurisdiction to make the same? and

2. If so, were the acts, proved by the evidence to have been committed, a violation of section 1956, under the circular of the Secretary of the Treasury?

The evidence touching the first question is, that the vessel on June 6th, 1892, at the time of the seizure, was in latitude 59°9' N. longitude 152°41' W. well inside of Cook's Inlet, lying in a calm, within sight of the shore about twenty miles distant from it, at the nearest point. Cook's Inlet is on the eastern side of that portion of Alaska which borders on the Gulf of Alaska; it is about forty-seven miles wide at its entrance, and extends northward into the mainland a distance of, perhaps, a hundred and forty miles. The Kodiak when seized was, as shown from the map in evidence, at least three or four miles inside of a line drawn across the entrance to the inlet from Cape Douglas to Point Bede, the nearest headlands, and almost equally distant from them, but somewhat nearer to Cape Douglas. It was contended on behalf of the claimant that these facts show that this court has no jurisdiction to try the case for the reason that the municipal laws of the United States have no force upon the sea beyond a marine league or three miles from the shore line; and that the statute prohibiting the killing of fur-bearing animals within the limits of Alaska Territory or "in the waters thereof," only means, so far as it applies to the sea, a distance of three miles from the mainland or islands. If this position is correct, Congress did a vain and useless thing when it enacted the statute under which this prosecution is had; for from the nature

and habits of the sea-otter, if hunters are allowed to come with their vessels and hover along the coast within a few miles of shore, though beyond a marine league therefrom, and kill them without molestation, then the laws for their protection are futile and might as well be repealed. But the position is not correct; the contention is not a valid one. In Church v. Hubbart, 2 Cranch, 187, the doctrine is announced that nations may prevent the violation of their laws by seizures on the high seas, in the neighborhood of their own coast, and that there is no fixed rule prescribing the distance from the coast, within which such seizures may be made. However, it can hardly be claimed that any portion of Cook's Inlet is "high sea" within the accepted meaning of the phrase, for it is well land-locked by islands extending from Kadiak Island to Cape Elizabeth on the east, and can only be entered by coming in near some of these islands, or by the way of Shelikoff Straits. In Kett's Commentaries, Vol. 1.30, it is stated that: "The extent of jurisdiction over adjoining seas is often a question of difficulty and of dubious right. As far as a nation can conveniently occupy, and that occupancy is acquired by prior possession or treaty, the jurisdiction is exclusive. Navigable rivers which flow through a territory and the sea coast adjoining it, and the navigable waters included in bays and between headlands and arms of the sea, belong to the sovereign of the adjoining territory, as being necessary to the safety of the nation and to the undisturbed use of the neighboring shores." And on the same subject this learned author says: "Considering the great extent of the American coast, we have a right to claim for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands as, for instance from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi."

In 1849 Mr. Buchanan, Secretary of State, declared the claims of the United States to maritime jurisdiction to be embodied in the following proposition: 'The exclusive jurisdiction of a nation extends to the ports, harbors, bays, mouths of rivers and adjacent parts of the sea inclosed by headlands, and, also, to the distance of a marine league, or as far as a cannon shot will reach from the shore, along its coasts." 1. Wharton's Intn'l. L. D. Sec. 32. The case of the Louise Simpson, 2 Saw. 57, was a suit to enforce forfeiture of said vessel for a violation of section 4, act of July 27, 1868, extending the laws relating to customs, commerce and navigation over the territory of Alaska, and the executive order of February 4, 1870, prohibiting the importation of "distilled spirits into and within the district of Alaska."

In the decision by Judge Deady, which was affirmed on appeal, it was held that the simple act of taking these spirits within Kotzebue Sound was a violation of the law, "because it was an 'importation of distilled spirits into and within the district of Alaska.' The phrase, 'district of Alaska,' as used in this act and executive order, in my judgment, includes that portion of the sea along its coasts, which lies inside of a line drawn from the promontory of Point Hope to the Cape Prince of Wales." Now it is true that all the waters of this sound are far east of the western line described in the cession of this territory by Russia to the United States, by the treaty of March 30, 1867, but the Russian government claimed and exercised the same authority and jurisdiction over the waters of which Cook's Inlet is a part, as it did over the waters along the western coast of its American possessions, and if the United States now maintains jurisdiction over Kotzebue Sound,

which is about 160 miles between projecting headlands, not land-locked, and in size more than three times the area of Cook's Inlet, it certainly can with much better claim of right maintain jurisdiction over the latter. In re Cooper, 143, U. S. R. 472, which was an application to the Supreme Court of the United States, for a writ of prohibition to the District Court of Alaska, to restrain the enforcement of a sentence of forfeiture and condemnation against the schooner W. P. Sayward, upon the grounds that the court was without jurisdiction in the premises, Mr. Chief Justice Fuller, who delivered the opinion of the court, in speaking of the authority for the seizure of the Sayward said: "If we assume that the record shows the locality of the alleged offense and seizure as stated, it also shows that the officers of the United States, acting under the orders of their government, seized this vessel engaged in catching seal and took her into the nearest port; and that the law officers of the government libeled her and proceeded against her for the violation of the laws of the United States, in the district court, resulting in her condemnation. How did it happen that the officers received such orders? It must be admitted that they were given in the assertion on the part of this government of territorial jurisdiction over Behring Sea to an extent exceeding fifty-nine miles from the shores of Alaska." To apply this reasoning to the case at bar it may be said that Commander Johnson, with the U. S. ship Mohican, was by orders of the government, cruising along the coast of Alaska and within the waters of Cook's Inlet at the time he made this seizure. How then did it happen that he received such orders? It must be presumed, I think, that they were given in the assertion on the part of this government of territorial jurisdiction over these waters. And if I am correct in this, then it is not the province of courts to participate in the discussion of the questions arising out of this claim of jurisdiction or dominion, for they are of a political nature, and not judicial. National dominion and sovereignty may be extended over the sea as well as over the land, and in our government when Congress and the President assert dominion and sovereignty over any portion of the sea or over any body of water, the courts are bound by it. In re Cooper, supra, The James G. Swan 50, Fed. Rep'r 106.

These considerations dispose of the first question raised by the claimant. I think this court has jurisdiction of the case.

The next question is as to the sufficiency of the evidence, when applied to the statute and order of the Secretary of the Treasury, to warrant a decree of condemnation and forfeiture as prayed for in the libel of information.

The claimant corporation was the first lessee of the right to take fur-seals, under the act of July 1, 1870, entitled, "An act to prevent the extermination of fur-bearing animals in Alaska." This lease was executed and delivered August 31, 1870, for the term of twenty years from May 1, 1870. In conducting this business and in connection with it this company established trading posts and stores at different points in the territory, for trading with the natives and buying furs; and also owned and operated a number of vessels for use in carrying goods, wares and different kinds of freight to these trading posts, and in bringing away from them furs and other articles of commerce purchased. In the plant for conducting this extensive business, the company invested a large amount of money, and at the expiration of its lease it still kept up these trading posts and continued to do business along its accustomed lines, except as to privileges granted by the lease, and obligations thereby incurred. The Kodiak was one of its vessels used in the ordinary demands of its business. The testimony bearing directly upon the case is not voluminous and there is no conflict as to the material facts. The locality of the vessel at the time of her seizure has already been stated. The evidence further shows that at said time she had on board eight white men consisting of her necessary officers

and crew, and ten natives or Indians, about thirty more who were out hunting coming on board later in the day; that these natives had their "bedarkes," or canoes with them and were armed with spears, clubs and bows and arrows, used by them in hunting and killing fur-bearing animals, especially sea otters; that they had on board the vessel twelve sea-otter skins caught on the voyage, and five brought on by natives at English Bay, and three of these animals, just killed that day were brought on after the seizure, but that all had been killed by natives, and without the use of firearms. It is positively shown that none of the white men took any part whatever in hunting, from the time the vessel started on this trip until seized at Cook's Inlet. Conceding these facts, however, the prosecution contends that there was such an arrangement; or such collusion between the claimant and the natives as to make it a real party to the killing of these sea-otters, and liable to the penalties of the statute. But I do not think the testimony sustains this contention. All the direct evidence there is on this subject comes from the witnesses for the claimant, and from them it appears that the skins of sea-otters are very valuable, and the taking of them by the natives is the principal source of revenue from which they make their living. M. S. Washburn is the agent of the claimant at Kadiak, Alaska, and has been in its employ for over thirteen years. He testifies that he is well acquainted with the habits and customs of the natives and of their relations to the company, and its manner of doing business with them; that during the winter the natives some times organize hunting parties for taking sea-otters, and in the spring, through their chief or some of their principal men, apply to the company's agent for transportation on one of its vessels to the well-known hunting grounds, and also for advances of provisions and clothing necessary for the hunt; that some-times they wish to be landed near the hunting grounds selected, and hunt from the beach until such time as the vessel can return for them and take them to other grounds or back home; that until the last four or five years it was their custom to hunt from the beach, but since that time they usually remain on the vessel, sleep, cook their own food and eat there, and go out from it in their bedarkes to hunt. He further testifies that the master of the schooner keeps an account against each Indian for all goods furnished; and for each skin brought in and turned over to him for safe keeping, he gives out a check or receipt and at the end of the hunt when the Indians leave the boat they return these checks and draw the skins which they represent. The natives can then sell these skins to any one who will give them the best price for them, as the company has no contract for their purchase, but they usually, though not always, sell them to its agent.

But the company never hires or in any way engages them to hunt, and has no claim nor lien whatever on these skins. This witness and the master both testify that the natives which were on the Kodiak at the time of her seizure were there and were operating under the plan or arrangement as stated, and in no other way. This arrangement certainly accommodates the natives and no doubt enables them to make larger catches then they could without this assistance, but the company gets its benefits from the profits on goods sold and furs purchased, and as it secures most of the trade, those profits probably pay it well for all trouble with the native hunting parties. And it is argued in its behalf that under the order of the Secretary of the Treasury, dated April 21, 1879, it had the right to do what the evidence shows it was doing. The portions of this order relied upon for this purpose, read as follows:

IMPORTANT CASES DECIDED - "The Alaska Herald" - Page Six

"No fur-bearing animals will therefore, be allowed to be killed by persons other than the natives, within the limits of Alaska Territory or in the waters thereof," and, "No vessel will be allowed to anchor in the well-known otter-killing grounds, except those which may carry parties of natives to or from such killing grounds." There is no room for construction or verbal finesse in the first clause quoted; it excepts the natives from the general prohibition against all persons in section 1956, and is, "the consent of the Secretary of the Treasury," that they may kill, under the restrictions of the order, such fur-bearing animals. And the second clause also seems plain enough; it amounts to a permit for vessels to carry natives to and from the otter-killing grounds, and when so engaged to anchor there. The Kodiak was doing nothing more than is permitted by this clause, unless allowing the natives to remain on board to sleep and eat there instead of landing them on the beach, and selling them food and clothing constitutes a violation of the law. But in my opinion these acts do not, of themselves, constitute nor even import a violation of the statute. They might in connection with other evidence tend to prove such violation. But in this case such other evidence, if any, is very slight. It follows from these views that the libel must be dismissed, and it is so ordered.

I hereby certify that I have typed the foregoing six pages of material appearing in the December 12, 1892, issue of "The Alaska Herald" and that the material is a true and correct copy of copy received from National Archives and Records Service, Washington, D.C. from Box 262 of the Records of the Department of Justice.

Beatrice D. Langnes

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-- COPY --

Department of Justice.
OFFICE OF THE
Solicitor of the Department of Commerce and Labor.
Washington.

C.C. 228

March 31, 1905.

The Honorable

The Secretary of Commerce and Labor.

Sir:

In reply to your request for my opinion as to the authority of this Department to prevent the encroachment of Japanese fishermen upon the salmon fisheries of Alaska, I have the honor to say:

It appears from the petitions and protests which have been filed with you that the business of catching, curing and canning salmon and other fish products of the waters of Alaska, and of the States of Washington, Oregon and California has developed into an industry of great promise. The value of the property now employed in the prosecution of this industry is $20,000,000; the number of men and women employed is 31,000 and the total value of the annual product is about $20,000,000. It is established that there are 300,000 Japanese engaged in the fishing business, a great many of them have for many years been engaged in importing salt salmon, which is a favorite necessity, from the Siberian Coast. Three years ago they came into the American markets and now that they are losing their foothold on the Siberian Coast, it is claimed that they will swarm into Alaskan waters if some preventive action is not immediately taken. Their advent in American waters, it is alleged, will be a menace to the business interests of Washington and Alaska and the action of this Department is urged.

It is well settled that fish in their natural element, unconfined, are public property. They are the property of the nation. The right of a nation to appro-

Letter, Solicitor of the Department of Commerce and Labor to Secretary of Commerce and Labor, March 31, 1905.

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priate its marginal seas and to reserve exclusively to its citizens the right to take fish in such marginal seas is a well recognized principle of international law. (Hall on International Law, p. 158, 4th ed.; Halleck on International law, p. 155, 3rd ed.; Taylor on International Public Law, p. 278)

It is also well settled that the right of a nation to exercise sovereignty and jurisdiction over its marginal seas extends for a distance of at least one marine league from shore. This principle was recognized by the Supreme Court in the case of Manchester vs. Massachusetts, 139 U. S. 256, in which case the court said:

> "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast; that bays wholly within its territory not exceedings two marine leagues in width at the mouth are within this limit; and that included in this territorial jurisdiction is the right of control over fisheries, whether the fish be migratory, free-swimming fish, or free-moving fish, or fish attached to or embedded in the soil. The open sea within this limit is, of course, subject to the common right of navigation; and all governments, for the purpose of self-protection in time of war or for the prevention of frauds on its revenue, exercise an authority beyond this limit."

This distance, (one marine league from the shore) was fixed by the supposed range of a cannon in position. The more recent extension of the power of artillery would suggest that the distance might properly be increased from time to time with the increased range of guns. The United States has, however, generally recognized this distance in its negotiations with other nations, and the rule seems to be so far fixed that a nation is bound by it in the absence of express notice that a larger extent is claimed. (Hall on International Law, [illegible], 4th Ed).

It clearly appears, therefore, that Congress by appropriate legislation, subject of course, to treaty rights, may exclude aliens from fishing in

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Alaskan waters, at least within one marine league of the shore, as above defined.

It only remains to be considered, therefore, whether or not Congress has so exercised this power as to authorize the Department of Commerce and Labor to grant the relief sought by the petition. Section 3 of the Organic Act provides:

> "That it shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, * * *; and to this end it shall be vested with jurisdiction and control of the Departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law."

It is to be observed, however, that the section above quoted does not vest in this Department any specific power other than is now or may be prescribed by law. The salmon and other fisheries of Alaska are again referred to in Section 7 of the Organic Act, which is in part as follows:

> "The jurisdiction, supervision and control now possessed and exercised by the Department of the Treasury over the fur seal, salmon and other fisheries of Alaska * * * are hereby transferred and vested in the Department of Commerce and Labor."

A careful reading of the Alaska Salmon Fisheries Act and other laws defining the jurisdiction, supervision and control which the foregoing clause of the Organic Act transferred to and vested in the Department of Commerce and Labor, fails to disclose any authority to prohibit aliens from taking fish in Alaskan waters. The provisions of law which authorize you to establish and enforce such regulations and surveillance as may be necessary to secure compliance with the laws relating to the salmon fisheries of Alaska are general in their application and do not distinguish between aliens and citizens of the United States. You are, therefore, without authority to establish and enforce regulations, applicable only to Japanese fishermen, for the purpose of excluding them. Regulations prohibiting fishing in certain waters or at certain

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times would include and be operative against citizens as well as aliens.

I am, therefore, of opinion that while it is clearly competent for Congress, by appropriate legislation, to exclude aliens from fishing in American waters, it has not yet done so, and until it acts this department is without authority to prevent the encroachment of Japanese fishermen upon the salmon fisheries of Alaska, as requested in the petitions submitted.

The statement, that if the Japanese are allowed to fish in American waters unmolested they will escape the specific tax which others are compelled to bear, is doubtless due to a misapprehension of the law. The section in point (Sec. 460, 31 Stat. 330) provides:

> "That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain a license so to do from a district court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:
>
> * * * * * * *
>
> "Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton."

It is manifest from the foregoing that all persons, corporations or companies engaged in the business of curing and canning salmon and other fish products within the District of Alaska are required to procure a license and pay a tax. The law includes aliens as well as citizens. I am informed that in order to conduct profitable fishing operations it is necessary to maintain on shore a cannery or saltery. Assuming this to be the case the Japanese will not escape the payment of the tax if the law is properly enforced.

Very respectfully,

(Signed) Edwin W. Sims.

Solicitor.

DX BZ

Department of Commerce and Labor
OFFICE OF THE SECRETARY
Washington

June 20, 1906.

Sir:

The Department acknowledges the receipt of your letters of the 23rd and 25th instant, with reference to the Act of June 14, 1906, "To prohibit aliens from fishing in the waters of Alaska."

It is noted that your letter of the 23rd was written under a misapprehension of the facts, and that you state the officers of the Revenue Cutter Service will be instructed with a view to properly enforcing the provisions of the Act.

Respectfully,

Lawrence O. Murray
Acting Secretary.

The Honorable
The Secretary of the Treasury.

Correspondence between Department of Commerce and Labor and the Department of the Treasury, June 20, 1906; June 23, 1906; June 26, 1906; June 28, 1906.

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY
WASHINGTON June 21, 1906.

The Honorable,
Secretary of Commerce and Labor.
Sir:

1. Referring to your letter of the 20th instant calling my attention to "An Act to prohibit aliens from fishing in the waters of Alaska", and my reply to the same of the 21st instant, I have the honor to state that my letter in relation to this subject was written under a misapprehension of the facts.

2. You are informed that, in accordance with your request, pending the issuance of such regulations as the Department of Commerce and Labor may make, the attention of officers of the Revenue-Cutter Service in Alaskan waters will be called to the provisions of said Act, and they will be instructed, in case violations of the Act are discovered, to take such action as the law and the circumstances in each particular case seem to warrant. They will also be directed to report to the Secretary of Commerce and Labor any violations which come to their notice.

Respectfully,

(sgd) [illegible]
Secretary.
G.

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY
WASHINGTON June 21, 1906.

Captain J.C.Cantwell, U.S.R.C.S.,
Commanding U.S.Revenue Cutter McCULLOCH,
Port Townsend, Washington.
Sir:

Your attention is invited to the inclosed copy of an Act of Congress approved June 14,1906 (Public No.[illegible]), entitled "An Act to prohibit aliens from fishing in the waters of Alaska", and you are directed to report to the Department of Commerce and Labor, as soon as practicable, any violations of said Act which you may discover; and in case violations are discovered pending the issuance of regulations and further instructions from said Department, you will take such action as the law and the circumstances, in each particular case seem to warrant. You will be furnished with copies of the regulations as soon as they are issued by the Department of Commerce and Labor.

Respectfully,

(Signed) J. B. [illegible]
Assistant Secretary.

R.
T.
1 inclosure.

TREASURY DEPARTMENT

OFFICE OF THE SECRETARY

WASHINGTON, June [illegible]

Captain H.M.Broadbent, U.S.R.C.S.,

Commanding U.S.Revenue Cutter [illegible],

Sitka, Alaska.

Sir:

Your attention is invited to the inclosed copy of an Act of Congress approved June 14,1906 (Public No.[illegible]), entitled "An Act to prohibit aliens from fishing in the waters of Alaska", and you are directed to report to the Department of Commerce and Labor, as soon as practicable, any violations of said Act which you may discover; and in case violations are discovered pending the issuance of regulations and further instructions from said Department, you will take such action as the law and the circumstances, in each particular case seem to warrant. You will be furnished with copies of the regulations so soon as they are issued by the Department of Commerce and Labor.

Respectfully,

(Signed) J.B.REYNOLDS.

Assistant Secretary.

Enclosure.

copy--

June 23,1906.

The Honorable,

The Secretary of Commerce and Labor.

Sir:

I am in receipt of your letter of the 20th, asking to be advised by the officers of the revenue cutters in Alaskan waters of any violations of the laws prohibiting aliens from fishing in the waters of Alaska pending the issuance of regulations by your Department. I suggest that regulations governing the Revenue-Cutter Service must of necessity be issued by this Department. I will be glad to incorporate any suggestion you may make into the regulations of the service. Any other policy results in divided authority, which is inimical to good administration.

Respectfully,

(Signed) L.M.SHAW,

Secretary.

Wrote in Secretary Shaw's office
Not checked by Chief Dom [illegible]
[illegible] [illegible]

Department of Commerce and Labor
OFFICE OF THE SECRETARY
Washington

RECEIVED
1906.

Sir:

I have the honor to invite your attention to the [illegible] approved June 14, 1906, entitled "An Act to prohibit aliens from fishing in the waters of Alaska." (Public, No. 222.)

Section 5 of this Act makes it the duty of the Secretary of Commerce and Labor to enforce its provisions, and for that purpose authorizes him to employ, through the Secretary of the Treasury, the vessels of the Revenue Cutter Service.

Pending the issuance of such regulations as this Department may find it necessary to make, I have the honor to request that the attention of the officers of the Revenue Cutter Service located in Alaskan waters be called to its provisions; that they be instructed to report to this Department, as soon as practicable, any violations which they may discover; and that in case violations are discovered pending the issuance of regulations and further instructions, they take such action as the law and the circumstances in each particular case seems to warrant.

As soon as the Department issues the regulations, a copy of the same will be forwarded to you.

Very respectfully,

[signature]
Secretary.

The Honorable

The Secretary of the Treasury.

Encl.
1226-C.

DX CH

3199

United States Senate,
COMMITTEE ON MINES AND MINING.

FISHERIES
APR 1 - 1921

March 28, 1921.

COMMISSIONER
APR 1 - 1921
FISHERIES

Dr. Hugh M. Smith,
Commissioner, Bureau of Fisheries,
Department of Agriculture.

Dear Sir:

I have much complaint of Japanese engaging in our Pacific Coast fisheries in United States waters. If this is permitted and continued, it is likely to be the cause of serious trouble. Please advise me in regard to the matter, that is, as to whether or not Japanese are engaging in these fisheries, and, if so, by what authority they are permitted to do so.

I will be obliged to you for any information on the subject.

With sincere regards,

Very truly yours,

[signature]

Letter, Senator Poindexter to Dr. Hugh M. Smith, March 28, 1921.

Subscription $3.00 per Year Foreign Countries $3.50 per Year

Devoted to the Commercial Fisheries

Pacific Fisherman

Seattle, Washington.

MILLER FREEMAN, Publisher
RUSSELL PALMER, Manager

21 April 1920.

COMMISSIONER
APR 26 1920
FISHERIES

Dr. H. M. Smith,
Chief, Bureau of Fisheries,
Washington, D.C.

Sir:

In his statement given to the Associated Press, April 12th, Attorney general Palmer said:

> "According to recent reports to the Department the Japanese in some sections of California have taken advantage of the fact that owing to conditions during the war some of their clandestine fishing within American waters was not prosecuted".

You will find the Japanese both directly and through their white business dummies will frantically protest against the suddenness of this action - that they didn't know their operations were contrary to the laws of this country, etc.

I call your attention to a precedent which the Japanese know all about: During the Russo-Japanese War, Japanese fishing vessels were seized by two gunboats while fishing in the waters of Southeast Alaska and the Japanese were summarily thrown into jail.

There was no note writing about this incident - and no war and the Japs have kept out of Alaska ever since.

It is idle to say the Japanese have been ignorant of our

ALSO PUBLISHERS OF MOTORSHIP DEVOTED TO COMMERCIAL MOTOR VESSELS

Letter, Miller Freeman, Publisher, Pacific Fisherman, to Dr. Hugh M. Smith, April 21, 1920.

coastwise laws. The truth is they have been willing to take the risk because of the enormous returns obtainable by plundering these rich fisheries. If their vessels and gear be now confiscated, those who have been in the business for sometime would now retire with fortunes.

Bear in mind also these Japanese-owned fishing fleets are the best means of illegal admittance of Japanese to this country.

Does not the presence of these aliens in our fisheries constitute a potential menace to our country from a military standpoint?

Yours very truly,

Miller Freeman

MF:AB

DX CI

April 1, 1921.

Hon. Miles Poindexter,
United States Senate,
Washington, D. C.

My dear Sir:

I beg to acknowledge the receipt of your letter of the 28th ultimo making inquiry in regard to Japanese fishermen in Pacific coast waters.

Permit me to advise that in all fisheries over which the federal government exercises jurisdiction aliens are excluded. As you are well aware, however, the fisheries in State waters are under the jurisdiction of the local authorities, and the presence of Japanese and other aliens fishermen in those waters is either in conformity with or in violation of State laws. There has been much correspondence on this subject and the conclusion of this office is that the States are able to remove the situation if they care to do so. It is realized that the exclusion of aliens from the local fisheries would seriously inconvenience the canning and other interests in certain localities, particularly southern California.

Very truly yours,

Commissioner.

Letter, Commissioner H. M. Smith to the Honorable Miles Poindexter, April 1, 1921.

DEFENDANT'S EXHIBIT
CI - Idem
A-45-67 Civ

DX CV

Director, Bureau of Commercial Fisheries, July 28, 1967
Washington, D. C.

Acting Regional Director, BCF, Juneau, Alaska

BCF legislative program for 2nd Session, 90th Congress--
Re your memo of June 1, 1967

Attached are two proposals that might be considered for the 2nd Session of the 90th Congress. The proposal for consolidating three laws governing control of polution would help fulfill a national need; whereas, the second proposal would provide legislative benefit to the Alaska Region. In summary form, our proposals are listed as follows:

(1) Consolidation of three acts governing control of polution (Refuse Act of 1899; Oil Polution Act of 1924; Oil Polution Act of 1961).

(2) Implementation of laws to ensure that U.S. fishermen comply with international agreements pertaining to fisheries in international waters beyond the control of the State of Alaska.

We will expand any of our legislative proposals that you may find to be of interest.

Robert R. Simpson

Attachments

RRSimpson:scl

Memorandum, Robert R. Simpson, Acting Regional Director, to Director, Bureau of Commercial Fisheries, July 28, 1967.

BEST COPY AVAILABLE

(1) ~~Consolidation of Refuse Act of 1899, Oil Pollution~~
Act of 1924, and Oil Pollution Act of 1961

Problem:

There are three basic Acts which pertain to the control of pollution of waters of the United States; the Refuse Act of 1899, the Oil Pollution Act of 1924, and the Oil Pollution Act of 1961. These Acts are administered by three different agencies and it is an extremely difficult problem for field enforcement personnel to determine which Act applies to a specific violation and to determine which agency is charged with the enforcement responsibility. Our people encounter considerable difficulty in keeping abreast of these laws and amendments and find them very difficult to understand and enforce. We believe that for the most part the cumbersome nature of these laws have collectively made them ineffective.

II. Solution:

We recommend that the above Acts be consolidated into one Act, and that the Secretary of the Interior be charged with the basic responsibility for its administration.

(2) Laws needed to Ensure that U.S. Fishermen Comply with
International Agreements in Waters Beyond Control of
the State (of Alaska)

I. Problem:

It was determined that use of State of Alaska fisheries laws would be adequate to ensure U.S. compliance with the current king crab agreements. This approach is not sufficient because the Alaska laws are applicable only (1) to waters subject to State control; that is, the three-mile territorial sea with possibly a few exceptions; and/or (2) to Alaska citizens, even if they are fishing upon international waters; and/or (3) to any person bringing fish into waters or lands subject to Alaska control. Therefore, a U.S. vessel manned by U.S. citizens who were non-Alaskans could fish trawls more than three miles offshore in the pot sanctuary specified by the agreements and take king crab regardless of size or sex, eventually landing their catches outside Alaska. The above operation would not be in violation of Alaska laws. It would, however, violate many provisions of the U.S. king crab agreements with the U.S.S.R. and Japan and Federal officials would be unable to halt the operation since there are no U.S. laws implementing the agreements.

Another factor which should be considered is the similar provisions in both the U.S.S.R. and Japanese king crab agreements stating that each government will apply measures to its nationals and vessels to control king crab fishing as specified in the agreements. Noting the lack of Federal legislation making terms of the agreements applicable to all U.S. citizens and vessels and recognizing that reliance upon Alaska laws is not entirely sufficient, it appears the United States could justifiably be accused of not complying with the agreements.

II. Solution:

Legislation by the U.S. might profitably be aimed at a basic act allowing the Secretary of the Interior, probably with the advice of the contiguous state, to make regulations controlling the fishing efforts of U.S. vessels outside of the territorial waters of the U.S. This would provide a means of controlling trawling by our own fishermen, both in the fixed gear areas off Kodiak and the pot

sanctuary off Unimak Island. Such authority would be a gesture of good faith on our part and, in addition, may turn out to be vital in the future if the U.S. groundfish industry expands to the Kodiak area.

Our present dependence on State of Alaska regulations is not a healthy situation because it removes any possible action from our own enforcement branch.

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF COMMERCIAL FISHERIES
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR, BUREAU OF COMMERCIAL FISHERIES

JUN 1 1967

Memorandum

To: Assistant Directors, Regional and Area Directors

From: Director, Bureau of Commercial Fisheries

Deadline: Aug 1, 196

Subject: Bureau of Commercial Fisheries Legislative Program for the 2nd Session, 90th Congress

Recently we were asked to provide the Department with a brief survey of legislative possibilities for the 2nd Session of the 90th Congress. The request had a 24-hour deadline so there was not sufficient time for any survey in depth. A copy of the Bureau's response to this request is attached for your information.

In the early Fall we will be asked for our program for the next Session and I would like to have you begin to develop this program now. A copy of the Departmental Legislative Program containing our Bureau program for the 1st Session was sent to the Regions and Area on December 16, 1966. A copy of the Bureau program was excerpted and distributed to the Assistant Directors that same date. You may wish to refer to the current program in developing your contribution to our program for the 2nd Session.

It is my hope that you will consider each program you administer and determine whether additional legislation is required to extend, strengthen, or support what is being done. A question to be asked is whether there are gaps in our authority which should be filled either to begin new work or to supplement what we are now doing.

Please respond to this memorandum by August 1, 1967. This deadline has been set to permit time for some input from laboratories and stations.

In your submissions there should be a description of the problem, an explanation of the legislation required, sufficient facts upon which we can base a case for the legislation, and some forecast of what results might be accomplished.

It is my view that we need to make now a complete review of our legislative tools to detect gaps that need to be filled.

H. E. Crowther

Attachment

Memorandum, H. E. Crowther to Assistant Directors, Regional and Area Directors, June 1, 1967.

DX CY

WTD-IFC

September 10, 1930.

Russell,
Bureau Fisheries
Seattle, Washington

Maps showing tentative territorial waters sent you and Winn are to be treated as strictly confidential Stop Notify Winn

O'Malley.

Telegram, O'Malley to Russell, September 10, 1930.

WTD-IFC

October 15, 1930.

Russell,
Bureau Fisheries,
Seattle, Washington.

Under no circumstances should maps be made public Stop Very misleading and injurious impressions might result Stop These maps have no official significance or sanction and were prepared by Tariff Commission for Government use simply to facilitate the investigation it is conducting regarding catches of fish by foreign vessels

O'Malley

Copy left with Dr. H.F. Worley
of Customs Service, detailed
to Tariff Commission. 10/17/30
WDB.

Telegram, O'Malley to Russell, October 15, 1930.

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COMMISSIONER FISHERIES=

WASHINGTON DC=

OCONNOR ADVISES CUSTOMS HAVE LARGER SUPPLY MAPS SHOWING TENTATIVE TERRITORIAL WATERS SAME AS FORWARDED WINN JUNEAU SEPTEMBER TENTH/OCONNOR DESIRES BE ADVISED WHETHER BUREAU HAS ANY OBJECTIONS THESE BEING SENT OUT PUBLIC=/

RUSSELL.

COMMISSIONER OCT 15 1930 FISHERIES

Discuss before answering

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Telegram, Russell to Commissioner, Fisheries, October 15, 1930.

DX DB

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Director — DATE: February 29, 1956

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Alaska commercial fishery regulations, 1956

In the near future, there will be submitted for approval the annual revisions of the Alaska fishery regulations. While these revisions are rather extensive, most of them are non-controversial and of slight significance. There are, however, five important changes for consideration, and, for that reason, I am calling attention to them now. These are: (1) prohibition of fishing, except trolling, on the high seas off the Alaska coast by U. S. nationals, (2) registration and limitation of fishing boats to one operating area to be selected by the operator, (3) limitation on the days per week of fishing in the Bristol Bay area, depending upon the number of units of gear operating, (4) temporary closure during 1956 of 15 trap sites in the Prince William Sound area, and (5) continuation during 1956 of the pink salmon restoration program in Southeastern Alaska involving temporary closure of traps accounting for 50 percent of the trap catch of the area, and closure of extensive seine areas in the immediate vicinity of important salmon streams.

It is proposed to issue a notice of intent concerning the prohibition of high seas salmon fishing off the Alaska coast. This will put the industry and fishermen on notice that such regulations will be forthconing at a later date to be effective in 1956. They are being formulated now, but are not ready at this time, and there is an urgent demand that the other regulation changes be made known as soon as possible for planning purposes by the industry.

The Alaska fishery regulations as presently issued refer only to fishing in Territorial waters. It has been demonstrated that salmon can be taken in commercial quantities on the high seas to such an extent as to nullify protective measures imposed within Territorial limits. The Solicitor, on April 22, 1955, in Memorandum M-36273, held that the Secretary of the Interior is authorized by the North Pacific Fisheries Treaty Act of August 12, 1954, to regulate the taking of salmon on the high seas in areas contiguous to the Territorial waters of Alaska. The United States Section of the North Pacific Fisheries Commission has requested that such action be taken, and the Alaska fishing industry in general favors the prohibition of all salmon fishing, except trolling, by U. S. nationals on the high seas adjacent to Alaska.

Memorandum, Seton H. Thompson, Chief, Branch of Alaska Fisheries, to the Director, February 29, 1956.

With regard to the proposed regulation known as area licensing, which would permit each fishing vessel operator to select one district, but confine his operations to that district, there is divided opinion among both fishermen and operators. The objective of this regulation seems to be generally accepted, but some of the operators of mobile gear fear that it will favor those using fixed gear. The Service feels that it will benefit the operators of both forms of gear equally and tend to give some stability to fishing and to regulations governing fishing in each operating area. At the present time, there is extensive movement of gear from area to area, bringing full impact of intense effort on the peak of each run as it occurs. This would be eliminated under the proposed regulation. We believe it has merit as a conservation measure and will be generally acceptable after it is put into effect. This type of restriction is new in the Alaska fisheries, but is authorized by the Solicitor's Memorandum M-36276 of April 22, 1955.

The proposed limitation on fishing time in Bristol Bay is somewhat different than it has been in the past. This year, we propose to include in the regulations a table showing the allowable number of days fishing each week with varying numbers of units of gear in operation. If the number of units of gear is the same as in 1955, fishing will be limited to 2 days per week. If the number of units of gear can be reduced by industry consolidations, a greater amount of fishing time will be allowed. This proposed regulation will put the burden of responsibility on the industry to effect gear limitations. In the past, the responsibility has been on the Service to curb fishing time after the season commenced when the extent of fishing effort became known. This proposed regulation should work to the advantage of all concerned.

Prince William Sound has been closed to pink salmon fishing for 2 years, and will reopen this year under these proposed regulations. In response to a request for voluntary limitation of fishing effort in this area until restoration is complete, the operators have offered to surrender for 1956, 15 trap sites which otherwise would be fished. This closure is in the interest of conservation and is similar, though less drastic, than the trap curtailment program in Southeastern Alaska.

Definite gains have been achieved by the restoration program imposed on the Southeastern Alaska pink salmon fishery in 1954 and 1955. The spawning escapements in both years were better than in the parent years, but still not adequate to restore the runs fully. There is almost unanimous opinion that the restoration program should be continued through 1956. If it should develop that the runs are better than now anticipated, it will be possible to utilize them to the maximum by increasing the fishing time for the authorized gear in the area.

A complete itemized statement and justification of each proposed change will accompany the revised regulations. This is merely advance notification of the important changes contemplated.

Seton H. Thompson

DX DC

SUMMARY OF PROCEEDINGS

CONFERENCE ON

CO-ORDINATION OF FISHERIES REGULATIONS

BETWEEN

CANADA AND THE UNITED STATES OF AMERICA

SEATTLE, WASHINGTON, FEBRUARY 27-28, 1957

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CONFERENCE ON CO-ORDINATION OF FISHERIES REGULATIONS Between Canada and The United States. "SUMMARY OF PROCEEDINGS" Seattle, Washington February 27-28, 1957

CONFERENCE ON CO-ORDINATION OF FISHERIES REGULATIONS

SUMMARY OF PROCEEDINGS

Representatives of Canada and the United States met in Seattle, Washington on February 27 and 28 to discuss co-ordination of specific fisheries regulations for the Pacific area pertaining to offshore salmon net fishing, salmon troll fishing and trawl fishing for petrale sole and black cod.

Mr. G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada and Mr. W. C. Herrington, Special Assistant to the Under Secretary of State, Washington, D. C., headed the Canadian and United States Delegations respectively. A list of those attending the conference is appended.

Offshore salmon net fishing:

The representatives of both Canada and the United States agreed that development of major offshore salmon net fisheries posed a serious management problem and that regulation of such fishing in the eastern Pacific ocean was essential to the conservation of salmon stocks of North American origin.

The Canadian Delegation stated that Canada was prepared to prohibit her fishermen from taking salmon in offshore waters between 35° and 60° north latitude, except by trolling. For the purpose of this proposed regulation, offshore waters would include the high seas off continental United States and Alaska and the waters seaward of a line joining Bonilla Point and Tatoosh Island at the entrance of the Strait of Juan de Fuca commencing at the point of intersection with the international boundary line; thence northwesterly along the shoreline of Vancouver Island to Cape Beale; thence along a line projected therefrom to Amphitrite Point; thence along the shoreline of Vancouver Island to Cox Point; thence along a line projected therefrom to Lennard Island Light; thence along a line projected therefrom to the westernmost point of Vargas Island; thence along a line projected therefrom to Rafael Point on Flores Island; thence along a line projected therefrom to Estevan Point; thence along a line projected therefrom to Zajo Point; thence along a line projected therefrom to Clarke Point on Brooks Peninsula; thence along a line projected therefrom to Solander Island Light; thence northerly along a line projected therefrom to Lown Point; thence along a line projected therefrom to Cape Russell; thence along a line projected therefrom to Cape Scott Light; thence easterly along a line projected therefrom to Cape Sutil; thence northerly along a line projected therefrom to Herbert Point on Calvert Island; thence northwesterly along a line projected therefrom to Currie Islet Light; thence along a line projected therefrom to Nob Rock; thence along a line projected therefrom to the southernmost point of the Estevan Islands; thence along a line projected therefrom to Terror Point on Banks Island; thence along a point projected therefrom to Bonilla Island Light; thence northerly along a line projected therefrom to Butterworth Rocks; thence along a line projected therefrom to a position 3 miles west of the northwesterly point of Dixon Island; thence along a line projected therefrom due north to the international boundary line between Canada and Alaska; except the waters along the coast of the

569-731 O - 75 - 22

Queen Charlotte Islands inside a line commencing at Langara Island Light and projected easterly therefrom to Chag Rock; thence along a line projected therefrom to Miah Point; thence along a line projected therefrom to Kate Point; thence southerly along the eastern shoreline of Graham Island to Lion Point at the entrance to Skidegate Inlet; thence along a line projected therefrom to Gray Point on Moresby Island; thence along a line projected therefrom to Boudder Point on Burnaby Island; thence along a line projected therefrom to Garein Rocks Light; thence along a line projected therefrom to Tait Point on Kunghit Island; thence along a line projected therefrom to Sr. James Island Light; thence northwesterly along a line projected therefrom to Mehcan Fraser Point on Moresby Island; thence along a line projected therefrom to Chads Point; thence along a line projected therefrom to Kitgoro Point; thence along a line projected therefrom to the northwesternmost point of Hippa Island; thence along a line projected therefrom to Tian Head on Graham Island; thence along a line projected therefrom to the northwesternmost point of Frederick Island; and thence northerly to the point of commencement at Langara Island Light.

The Canadian Delegation advised the Conference that the reference points used to describe the proposed line beyond which salmon fishing, except by the use of troll gear, would be prohibited were taken from Canadian Hydrographic Charts No. 3593, 3744 and 3844 and that it might be necessary to adjust the line somewhat in order to describe it adequately for enforcement purposes. Further, such a restriction on offshore salmon fishing could be brought into effect almost immediately if general agreement were reached during the conference.

The United States Delegation stated that:

(1) The Secretary of the Interior now prohibited the taking of salmon by United States nationals in the Pacific Ocean, outside the waters of Alaska, north of Dixon Entrance and east of 175° west longitude, except by means of trolling.

(2) Federal legislation will be sought to extend in time for this season the geographical area of this regulatory power of the Secretary of the Interior as far south as approximately 45°30' north latitude.

(3) The State of Washington was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State seaward of a line commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between Sail Rock in Clallam County and Owen Point at the entrance to Port San Juan on Vancouver Island; thence southerly along a line projected therefrom through Sail Rock to the shoreline; thence westerly along the state shoreline of the Strait of Juan de Fuca to Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbour; thence southerly along a line projected therefrom to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to Cape Shoalwater Light at the entrance to Willapa Bay; thence southerly along a line projected therefrom to Leadbetter Point; thence southerly along

the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly along a line projected therefrom to the knuckle of the South jetty at the entrance of said river.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(4) The State of Oregon was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State seaward of a line commencing at the point of intersection of the California-Oregon state boundary with the Pacific Ocean high water mark shoreline; thence northerly along such high water mark shoreline, including extensions thereof across the waters of the bays or tidal areas of streams emptying into the Pacific Ocean, to the mouth of the Columbia River; thence northerly across the waters of the Columbia River along the line designating and defining the mouth of such river under ORS 511. 130 to the point of intersection of such line with the Oregon-Washington state boundary.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(5) The State of California was taking action in its Legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the state and by its citizens in international waters of the Pacific Ocean.

This Bill could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(6) If the State Bills fail of enactment, Federal Government legislation will be sought to secure in time for this season Federal Government regulation in the high seas as far south as required to provide protection for all salmon stocks located in the eastern Pacific Ocean off continental United States.

The lines proposed by the Canadian and United States Delegations were acceptable to the Conference as a whole with the exception of the following specific areas:

(a) The location of the line across the Strait of Juan de Fuca.

(b) The location of certain segments of the line proposed along the west coast of Vancouver Island.

(c) The location of the line described in the Alaska Fishery Regulations.

A sub-committee was appointed to consider and report on the location of the line across the Strait of Juan de Fuca. The United States Delegation requested an opportunity to give further consideration to the location of the line along the west coast of Vancouver Island as proposed by the Canadian Delegation and the Canadian Delegation requested an opportunity to consider the location of the line in Alaska as described in the Alaska Fishery Regulations.

Salmon troll fishing:

The United States Delegation stated that different regulations with regard to open season and size limit applied to the troll fisheries off the coast of continental United States, Canada and Alaska and that in their view, such regulations were necessary to conserve the salmon stocks and thus it would be desirable to have these conform in the respective areas.

The situation with respect to the season applicable to silver or coho salmon was satisfactory since California, Oregon and Washington had adopted a June 15 to October 31 season in 1949, Canada had adopted the same season in 1952 and the Alaska season was somewhat more restrictive extending from July 1 to September 20.

A season for chinook or spring salmon extending from April 15 to October 31 was adopted by the states of Oregon and Washington in 1955 and the season in the state of California is more restrictive extending from May 1 to September 30. The season in Alaska extends from April 15 to October 31 while the closed season in Canadian troll fishing regulations extends from December 1 to January 31 in the following year.

The United States Delegation stated that regulations for the coming season in Southeast Alaska (which is the only area trolled in Alaska) were not yet finalized by publication. There was excellent possibility that the opening date for the chinook or spring salmon would be changed to April 15; however, with 30 days notice required after publication, entry into effect would occur this year some days after March 15.*

The Canadian Delegation stated that the necessary action would be taken to have the Canadian season for the chinook or spring salmon troll fishery changed to April 15 to October 31 and that this would be put into effect before the coming season.

A minimum size limit of 26 inches total length for chinook or spring salmon caught by trolling was adopted by the states of California,

* Editor's note: The change to April 15 for Southeast Alaska was published in the Federal Register on March 6, 1957. See XXII FR 1379. Accordingly, the new regulation became effective April 6, 1957.

Oregon and Washington in 1949 and a slightly larger minimum size limit applies in Alaska since a 20 inch fork length measurement had been adopted. No minimum length for troll-caught chinook or spring salmon has been established in Canada but there is a general prohibition against retention of any salmon weighing less than 3 pounds. Following a general exchange of views on regulation of the salmon troll fisheries the matter was referred to a sub-committee for consideration and report.

Trawl fishing:

The United States Delegation outlined certain recent developments in the otter trawl fisheries which demonstrated in their view the necessity for further restrictions particularly with respect to the fishing season for petrale sole, a minimum size limit for black cod and the mesh size authorized for trawl nets.

After a brief discussion a sub-committee was appointed to give consideration to these particular aspects of the trawl fisheries and to prepare a report for submission to the Conference.

Sub-committee reports:

At the concluding session of the Conference, reports were presented by the chairmen of the sub-committees. After discussion these were accepted and approved by the Conference. The full text of each report is appended.

Major agreements reached:

The following major agreements were reached between the Canadian and United States Delegations during the Conference:

(1) The location of the line delimiting offshore waters as proposed by the Canadian Delegation was appropriate with the following shoreward adjustment on the west coast of Vancouver Island beginning at Rafael Point on Flores Island thence along a line projected therefrom to the light and whistle buoy at the entrance to Refuge Cove; thence along a line projected therefrom to Hesquiat Point; thence westerly along a line projected therefrom to Matlahaw Point; thence following the shoreline to [illegible] Point; thence northerly along a line projected therefrom to Escalante Point; thence along a line projected therefrom to Maquinna Point on Nootka Island; thence following the shoreline of Nootka Island to Ferrer Point; thence along a line projected therefrom to the light and whistle buoy at the entrance to Kyuquot Channel; thence along a line projected therefrom to Lookout Island Light; thence along a line projected therefrom to a point at the southwestern entrance to Kasparti Inlet; thence westerly along a line projected therefrom to Clarke Point on Brooks Peninsula;

(2) The location of the line delimiting offshore waters across the entrance to the Strait of Juan de Fuca proposed by the Canadian Delegation, namely the Bonilla Point - Tatoosh Island line, should be adopted provisionally and scientific and statistical studies should be undertaken to determine the composition and migratory movements of the silver or coho salmon stocks on each side of the line in order that the line may be relocated if necessary as a conservation measure based on scientific findings.

In this connection it was understood that the research results would be reviewed within two years by the interested agencies and that interim regulatory action could be taken by the State of Washington and Canada during the two year period if the research results showed that such action was required to conserve the silver or coho salmon stocks;

(3) The location of the remainder of the line delimiting offshore waters as proposed by the United States Delegation was appropriate;

(4) The line described in the Alaska Fishery Regulations was appropriate.

In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the "waters of Alaska" as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible;

(5) All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines whenever experience indicated that an adjustment was required;

(6) A minimum size limit of 26 inches total length, or optionally an equivalent weight limit, was to be applied to all chinook or spring salmon caught by troll gear in offshore waters;

(7) The open season for trolling for chinook or spring salmon was to be established as April 15 to October 31 except in California where the season now is more restrictive.

(8) A uniform minimum size limit for silver or coho salmon caught by troll gear in offshore waters was not required at this time;

(9) A uniform closed season for petrale sole extending from December 20 to April 15 of the following year will be established for the trawl fishery beginning with the coming season.

(10) A maximum incidental catch of 3,000 pounds of petrale sole per trip - not to exceed two trips per month - will be authorized for the Oregon, Washington and British Columbia trawl fisheries and California will take such action as necessary to prevent the use of California ports for the purpose of evading regulations applicable in the northern areas.

(11) All other recommendations presented in the reports of the sub-committees, copies of which are appended, were accepted and it was agreed that the agencies concerned should carry out the several recommended studies as soon as possible.

(12) It was agreed to maintain close and continuing liaison between the Pacific Marine Fisheries Commission and the Department of Fisheries in Canada at the technical and administrative levels.

It was agreed that the draft press release, which had been prepared by the press committee, and the precis of the meeting would be reviewed and approved by the chairmen of the Canadian and United States Delegations. A copy of the press release is appended.

The importance of the research programme agreed to by the two Delegations and designed to determine the proper location of the line delimiting offshore waters at the entrance to the Strait of Juan de Fuca based on scientific study of the silver or coho salmon stocks in the area was pointed out and the Conference expressed the hope that the agencies concerned in Canada and the State of Washington would give this project a high priority both from the standpoint of essential funds and personnel.

The chairmen of the Canadian and United States Delegations expressed thanks to their respective advisory groups and to the technical consultants to the Conference for their contribution to the deliberations.

The Conference closed at 5:30 P.M., February 28, 1957.

LIST OF THOSE ATTENDING THE CONFERENCE

FROM CANADA:

Delegates:

G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada.

Wm. M. Sprules, Department of Fisheries, Ottawa.

A. J. Whitmore, Department of Fisheries, Vancouver,

C. R. Levelton, Department of Fisheries, Vancouver.

Advisors:

G. T. Brajcich, Fishing Vessel Owners Assn. of British Columbia

J. H. Johnson, Prince Rupert Fishermen's Cooperative Assn. Prince Rupert.

F. Probert, British Columbia Gillnetters
F. Rolley

James D. Foote, Canadian Consul

H. Stevens, United Fishermen and Allied
W. J. Canic, Workers Union

C. Joe, Native Brotherhood of British Columbia.

J. Cameron, International North Pacific Fisheries Commission

R. Nelson, Fishing Association of
D. F. Miller, British Columbia
S. R. Furney,

R. Stanton, Pacific Trollers

D. J. Milne, Fisheries Research Board
K. S. Ketchen, of Canada, Nanaimo
A.W.H. Needler,

J. L. Hask, Fisheries Research Board of Canada, Ottawa.

FROM THE UNITED STATES:

Delegates:

Wm. C. Herrington, Special Assistant to the Under Secretary of State.

Warren P. Looney, Department of State

W. M. Terry, United States Fish &
John T. Gharrett, Wildlife Service.

R. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon.

M. C. James, Director, Oregon Fish Comission

R. S. Croker, Pacific Marine
Eugene D. Bennett, Fisheries Commission,
California.

C. A. Nelson, Puget Sound Gillnetters Assn. Mount Vernon.

J. N. Plancich, Fishermen's Packing Corporation, Anacortes.

N. Mladinich, Purse Seine Vessel Owners Association, Tacoma.

M. C. Bell, Acting Director, Washington Dept. of Fisheries

Advisors:

Senator E.A.C. Johnson and
Representative F. P. Belotti, California Legislature

W. O. Riley - all of Pacific Marine Fisheries Commission," California

LIST OF THOSE ATTENDING THE CONFERENCE

FROM THE UNITED STATES:

Advisors:

Senator H. M. Jackson and
Representative C. Kiga, Washington State Legislature.

Representative W.H. Holmstrom, Chairman and Representative R.G. Ellstrom, member, Legislative Fish and Game Committee, Oregon.

F. L. Wright, Pacific Marine Fisheries
C. K. Phenicie, Commission, Oregon.

H. J. McCool, Fishermen's Cooperative
B. G. Johnston, Association, Seattle.

H. Lokken, Fishing Vessel Owners Association, Seattle

N. P. Kuljis, Fishermen's Marketing Association, Seattle

J. S. Wilkinsen, Puget Sound Canners

H. A. O'Neill, Puget Sound Canners Association of Pacific Fisheries.

M. Edmunds, Garibaldi, Oregon

J. J. Mijich, Pacific Marine Fisheries Commission, Seattle.

J. Lomm, Puget Sound Gillnetters Assn.

TECHNICAL CONSULTANTS TO THE COMMISSION:

Robert J. Schaettler, Chairman, International Pacific Salmon Fisheries Commission.

Loyd Royal, Director, International Pacific Salmon Fisheries Commission.

 APPENDIX NO. 2

REPORT OF THE SUB-COMMITTEE ON TROLL REGULATIONS

The Committee recommends a 26 inch total length minimum size limit on chinooks in those waters that are considered to be outside waters by the respective jurisdictions. Optional equivalent weight limit would be satisfacto.

In making this recommendation the committee recognizes that biological a practical considerations are both involved and that biological evidence to da from all areas does not indicate that this proposal is essential as a conservation measure. Consequently, the committee recommends further study of the problem

The committee endorses the principle of setting aside nursery areas for silvers and chinooks for specific time intervals as the necessity is determin by study of local conditions.

The committee considered minimum size limits on silvers and concluded th there is no necessity for uniform size limits at this time.

APPENDIX NO. 3

REPORT OF THE SUB-COMMITTEE ON TRAWL REGULATIONS

It is recommended:-

1. That a uniform closed season from December 20 to April 15 for petrale sole be established.

2. That a maximum incidental catch of 3,000 pounds of petrale per trip not to exceed 2 trips per month be permitted in Oregon, Washington and British Columbia. California to take such action as necessary to prevent the use of their ports for the purpose of evading regulations in northern areas.

3. That both countries institute studies looking toward further protection of petrale sole and of the other species taken in the otter trawl fishery in international waters.

4. That both countries institute studies looking toward the establishment of uniform trawl mesh sizes so as to eliminate as far as possible the catching of undersized fish.

5. That both countries institute studies looking toward the establishment of a uniform minimum size for black cod in the two countries.

6. That no recommendation is made on a closed season on black cod as the present season has not demonstrated that it is of value from the standpoint of conservation and for this reason may be abandoned.

7. That the present state of the otter trawl fishery clearly demonstrates the need for procedures which will enable the two countries to collaborate informally in the formulation of regulations which are uniform as far as uniformity is desirable and necessary.

 APPENDIX No. 4

REPORT OF THE SUB-COMMITTEE ON THE LOCATION OF THE LINE DELIMITING OFFSHORE WATERS AT THE ENTRANCE TO THE STRAIT OF JUAN DE FUCA

It is recommended that the Sandilla-Tatoosh line be provisionally adopted, provided that scientific investigations and statistical studies be undertaken to develop further knowledge as to the following:

(1) Determination of the composition of the Swiftsure stock of silver or coho salmon compared with that of stocks occurring inside the Sandilla-Tatoosh line east to the Sail Rock-Owen Point line or farther east as might appear necessary and desirable during various summer months.

(2) Evidence of maturity of silver or coho salmon in the study area.

(3) Determination of the timing and extent of eastward migration of feeding silver or coho salmon in the Strait of Juan de Fuca.

Further it is recommended that the necessary research programs be designed to cover a two-year period and that the results of the research be reviewed at the end of that time by the interested agencies in order that the location of the provisionally adopted line may be reconsidered in the light of new knowledge.

It is recommended that the research undertaken be co-ordinated with that of other agencies, particularly with reference to tagging or marking programmes, whenever practicable.

 APPENDIX NO. 5

NEWS RELEASE: - March 1, 1957.

AGREEMENT REACHED ON U.S.-CANADIAN FISHERY REGULATIONS

United States and Canadian conferees today recommended coordinated regulations in the oceanic salmon and certain other fisheries in the Pacific Ocean. Nets in off-shore salmon fishing will not be permitted. The spring or chinook salmon troll fishing season will open not earlier than April 15 and will close October 31. The June 15 opening date on trolling for silvers or cohos will remain unchanged. Troll-caught chinook salmon will be required to be 26 inches minimum length or an equivalent minimum weight. In the petrale sole fishery, a uniform closed season from December 20th to April 15 will be established.

At present Canada does not have seasons for troll-caught chinooks or a minimum length regulation, or a season on petrale sole. The coast states this year have set an April 15 opening date for troll-caught chinook landings, and closed the petrale fishery from February 1 through April 15. Some net fishing for salmon has been carried out on the high seas exterior to the Strait of Juan de Fuca. In 1955 a gill-net fishery in "outside" waters began to develop.

Washington, Oregon and California are moving the needed laws through the current Legislatures. Canada can put into effect by administrative action such regulations as are necessary. It is planned that this coordinated system of regulations will take effect in the three states and Canada in time for the coming fishing seasons. Failure of action in any one of the four jurisdictions may jeopardize the entire program.

The meeting represents a long step forward in securing coordination of regulations to conserve Pacific Coast fisheries. Hitherto, the measures of Washington, Oregon and California have been coordinated through the Pacific Marine Fisheries Commission. The recommendations of the conferees when approved by the Legislatures and administrative action taken by Canada will mean that regulations along the entire Pacific Coast will be coordinated.

The meetings, which were held in the Salmon Bay Regional Office of the Washington Department of Fisheries, were attended by officials from Washington, D. C., Ottawa, members of the Legislatures and officials of the Pacific Coast states, as well as commissioners of the Pacific Marine Fisheries Commission and advisors from industry.

The recent growth of net salmon fishery threatened existing United States and Canadian salmon conservation programs. Such fishing already is forbidden in waters off the coast of Alaska by order of the Secretary of the Interior.

The conference also took note of a special problem which exists in the area adjacent to the Sandilla Point-Tatoosh Island line at the entrance to the Straits of Juan de Fuca, and agreed that mutual solutions should be investigated by Canada and the State of Washington in these waters.

Finally, arrangements on procedures for continued international review of coordinated regulations were reached.

In attendance were Canadian Delegates G. R. Clark, Deputy Minister of Fisheries, Ottawa; Wm. M. Sprules, Department of Fisheries, Ottawa; and from the Department of Fisheries, Vancouver, B. C., A. J. Whitmore and C. R. Lovelton.

Canadian Advisors were George T. Brajcich, Fishing Vessel Owners Association of British Columbia; John H. Johnson, Prince Rupert Fishermen's Cooperative Association at Prince Rupert; F. Probert and F. Rolley of British Columbia Gillnetters; James D. Foote, Canadian Consul; Homer Stevens and Mike J. Canic of United Fishermen and Allied Workers Union; Clarence Joe, Native Brotherhood of British Columbia; J. Cameron, International North Pacific Fisheries Commission; R. Nelson, D. F. Miller and S. R. Purney of Fishing Association of British Columbia; R. Stanton of Pacific Trollers; D. J. Milne, K. S. Ketchen and A. W. H. Needler, Fisheries Research Board of Canada, Nanaimo; and J. L. Hask, Fisheries Research Board of Canada, Ottawa.

The United States Delegates were Wm. C. Herrington, Special Assistant to the Under Secretary of State; Warren F. Looney, Department of State; W. M. Terry and John T. Charrett of United States Fish and Wildlife Service; M. C. James, Director, Oregon Fish Commission; R. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon; Richard S. Croker and Eugene D. Bennett of Pacific Marine Fisheries Commission, California; Carl A. Nelson, Puget Sound Gillnetters Association, Mount Vernon; John N. Plancich, Fishermen's Packing Corporation, Anacortes; Nick Mladinich, Purse Seine Vessel Owners Association, Tacoma; and Mile C. Bell, Acting Director, Washington Department of Fisheries.

United States Advisors were Senator E. A. C. Johnson, Representative F. P. Belotti, California Legislature, and W. O. Riley, all of Pacific Marine Fisheries Commission, California; Senator H. N. "Barney" Jackson and Representative Chet King of the Washington State Legislature; Representative Wm. H. Holmstrom, Chairman and Representative Robert G. Elfstrom, member of Legislative Fish and Game Committee, Oregon; Floyd L. Wright and Charles K. Phenicie of Pacific Marine Fisheries Commission, Oregon; H. J. McCool and Bert C. Johnston, Fishermen's Cooperative Association, Seattle; Harold Lokken, Fishing Vessel Owners Association, Seattle; J. Loman, Puget Sound Gillnetters Association; Nick P. Kuljis, Fishermen's Marketing Association, Seattle; John S. Wilkinson, Puget Sound Canners; Harold A. O'Neill, Puget Sound Salmon Canners, Inc., Association of Pacific Fisheries; Mark Edmunds of Garibaldi, Oregon; and Joseph T. Mijich, Pacific Marine Fisheries Commission, Seattle.

Attending as observers were Loyd A. Royal of New Westminster, B. C and Robert J. Schoettler, Seattle, both representing International Pacific Salmon Fisheries Commission.

State--FD--Wash.D.C.

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SUMMARY OF PROCEEDINGS

SECOND CONFERENCE

ON

CO-ORDINATION OF FISHERIES

REGULATIONS

between

C A N A D A

and the

UNITED STATES OF AMERICA

Vancouver, B.C. April 21 - 24, 1959.

Summary of Proceedings, Second Conference on Co-ordination of Fisheries Regulations between Canada and the United States of America, Vancouver, B. C., April 21-24, 1959.

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The second conference on the Co-ordination of Fisheries Regulations was held in Vancouver, B.C., from April 21 to 24 to give further consideration to the major agreements reached at the first conference held in Seattle, Washington on February 27 and 28, 1957, and to consider other matters related to the fisheries of the eastern Pacific Ocean of mutual concern to Canada and the United States of America.

Mr. W.C. Herrington, Special Assistant to the Under-Secretary of State, Washington, D.C., and Mr. G.R. Clark, Deputy Minister of Fisheries, Ottawa, headed the United States and Canadian Delegations respectively. A list of the official representatives, advisors, observers and others attending the conference is appended.

General Business

An agenda for the meeting was adopted and a copy is appended.

It was agreed that notes of each separate session would be prepared by the secretariat and that from this material a summary of the proceedings would be prepared and would form the official record of the conference.

Representatives of the press were excluded from the conference and it was agreed that a small press committee would be appointed to prepare a mutually acceptable statement for release to the press at the conclusion of the conference.

Ad hoc committees were appointed to review pertinent data and prepare a report on each of the following agenda items:

1. Coho salmon - Juan de Fuca Strait
2. Offshore salmon net fishing lines
3. Troll fishery regulations
4. Trawl fishery regulations

Coho Salmon - Juan de Fuca Strait

At the first conference on Co-ordination of Fisheries Regulations held in Seattle in 1957 a sub-committee was appointed to consider the location of the line delimiting offshore waters at the entrance to the Strait of Juan de Fuca and presented the following report:

"It is recommended that the Bonilla-Tatoosh line

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be provisionally adopted, provided that scientific investigations and statistical studies be undertaken to develop further knowledge as to the following:

(1) Determination of the composition of the Swiftsure stock of silver or coho salmon compared with that of stocks occurring inside the Bonilla-Tatoosh line east to the Bail Rock - Owen Point line or farther east as might appear necessary and desirable during various summer months.

(2) Evidence of maturity of silver or coho salmon in the study area.

(3) Determination of the timing and extent of eastward migration of feeding silver or coho salmon in the Strait of Juan de Fuca.

"Further it is recommended that the necessary research programme be designed to cover a two-year period and that the results of the research be reviewed at the end of that time by the interested agencies in order that the location of the provisionally adopted line may be reconsidered in the light of new knowledge.

"It is recommended that the research undertaken be co-ordinated with that of other agencies, particularly with reference to tagging or marking programmes, whenever practicable".

The conference was advised that a committee, consisting of Mr. Moore and Mr. Pautzke of the Washington State Department of Fisheries and Mr. Whitmore of the Department of Fisheries, Canada, and Dr. Needler of the Fisheries Research Board of Canada, had been formed following the Seattle conference to co-ordinate the coho (silver) salmon research. A report entitled "Joint Report on the 1957-58 Coho (Silver) Salmon Study in the Strait of Juan de Fuca by Canada and the United States" which had been prepared by this committee was presented to the Conference and accepted as a Conference Document. The conclusions contained in this report are as follows:

" (1) On the basis of tagging experiments, the racial composition of coho salmon in each of the three zones of the study area was the same.

(2) Virtually all coho salmon vulnerable to fishing in the area of study were fish in their third and last year of life. Throughout the area of study there was a gradual increase in the level of maturity of these fish as the season proceeded.

(3) During August, throughout the study area, about twice as many coho were feeding as in September. Evidence from tagging suggests that there was no significant difference in the proportion of feeding fish in each of the zones during comparable periods".

After some discussion if was agreed that this matter should be referred to an ad hoc committee with the following terms of reference:

(1) To review the factors influencing the conservation of coho stocks which pass through Juan de Fuca Strait and to review the needs for special measures to conserve these stocks.

(2) To consider, based on the scientific data, whether or not there is some other line than the existing one which would better assist in the management of the coho salmon stocks for conservation purposes.

The ad hoc committee held several meetings and submitted the following report referring to the terms of reference listed above:

Report of Ad Hoc Committee on Coho Salmon
Juan de Fuca Zones

"With reference to the first item a complete review of all these factors would involve a task of such magnitude that it would be impossible to complete the study in the alloted time even if data were available. The Committee has restricted its study to the immediate factors affecting the stocks which pass through or are destined to pass through the Strait of Juan de Fuca to the inner waters of Puget Sound and the Strait of Georgia. The escapement of coho to the streams and the catch in the area under consideration have been studied.

"The Committee also reviewed the results of the co-ordinated research in 1957 and 1958 on coho (silver)

salmon in the Strait of Juan de Fuca, recommended by the Conference on Co-ordination of Fisheries Regulations between Canada and the United States, February, 1957. It also reviewed other available information bearing on the needs for special measures to conserve these coho stocks.

"With reference to the second item of the terms of reference, the Committee was unable to reach agreement".

In commenting on this report the United States Delegation made the following statement:

"1. The Strait of Juan de Fuca is the only known migration passage for coho destined to Puget Sound.

2. In 1957 the heavy net fishing catch by Canadians inside the Sonilla-Point - Tatoosh Island line coincided with an early opening of the season, July 22. In 1958 the season opened on August 20 which resulted in a reduced coho catch. The length of the season is directly related to the size of the catch.

3. In 1957 the commercial catch in the inner Sound was 59,000 coho and in 1958 the catch amounted to 104,000 coho. The scarcity of coho in 1957 was recognized by the Washington State Department of Fisheries and as a result the season was closed in all waters on September 27. In spite of the closure the escapement to the central and southern parts of Puget Sound was poor.

4. The above facts indicate that both the commercial catch and escapement of coho to middle and southern Puget Sound were adversely affected by the larger catch in the Strait of Juan de Fuca in 1957.

5. In the United States view these facts indicate that the United States is faced with a serious conservation problem in the coho stocks in Puget Sound.

"On the basis of the joint research, we are agreed that the scientific findings show that the area from the Sonilla-Tatoosh line to Sooke Inlet line is a feeding and growing area for coho comparable to the outside Swiftsure Bank area. Consequently the present line is not serving the purpose for which intended that is, to protect stocks of mixed and growing coho. Joint research has not been carried out on coho

east of Sooke Inlet, and we therefore to not have information from such studies showing the characteristics of the stocks in this area.

"On the basis of the conclusions from the joint research west of Sooke Inlet, it is clear that a line at the eastern border of this research area would provide considerably more protection to stocks of mixed and growing coho than the present line. At the 1957 Conference, in the absence of data bearing on the best location of the line, and in spite of a strong United States preference for the Owen Point-Sooke line, the United States Delegation accepted Canada's request regarding location of a provisional line with the further provision for joint scientific studies to provide a basis for later consideration of relocation of the line.

"In the light of this previous procedure, we now propose that on the basis of present scientific knowledge, a new provisional line should be established near the eastern boundary of the joint research area, with provision for a further study in the area to the east, in order that the line may be relocated as a conservation measure based on scientific findings".

The Canadian Delegation pointed out that all the data contained in the first part of the United States statement had been considered by the Ad Hoc Committee but no agreement was reached on proposed action. Further, the Sonilla-Tatoosh line was provisionally accepted at the Seattle Conference as a line delimiting offshore waters across the entrance to Juan de Fuca Strait beyond which no salmon net fishing would be permitted. It was not designated solely for the purpose of protecting coho salmon stocks. Evidence from data on coho escapement to Canadian spawning streams in the Gulf of Georgia area does not indicate that the Canadian commercial fishery in Juan de Fuca Strait has adversely affected the runs, and the Canadian catch which averaged approximately 56 percent of the total catch of the stocks passing through Juan de Fuca Strait in 1957 and 1958 is believed to be no greater proportionately than the contribution of Canadian streams to these stocks. On the basis of the scientific data available to date Canada was unable to agree to any eastward relocation of the provisionally adopted Sonilla-Tatoosh line. The Conference was advised that Canada recognized at all times the need for scientific management of fishery resources in order to conserve the stocks and, as an example, had taken action to reduce the maximum depth of gill nets in the Strait of Juan de Fuca for the 1958 season. This would give some added protection to the coho salmon stocks under consideration.

The United States Delegation then presented the following resolution:

> "This Conference recommends to the Governments of Canada and the United States that they give consideration to advising the International Pacific Salmon Fisheries Commission that it should take into consideration the provision of adequate escapement of coho through the Strait of Juan de Fuca in formulating its regulations".

After careful examination of this resolution the Canadian Delegation stated that it was unacceptable since it appeared to request action by the International Pacific Salmon Fisheries Commission beyond the authority of the Convention and the Commission.

The United States Delegation stated that because the Conference had failed to make any real progress with regard to relocation of the Bonilla-Tatoosh Line the United States must reserve its position regarding the right to change the line in respect of American fishermen, but that if any such change were proposed the United States would consult with Canada beforehand.

The report of the Ad Hoc Committee on Coho Salmon - Juan de Fuca Strait - was accepted and it was agreed that a local committee on the Pacific Coast would be appointed to continue the study of the coho problem in the light of any additional pertinent scientific evidence which might be obtained in the future.

Review of Offshore Salmon Net Fishing Lines

The discussion on this item was opened by the Canadian Delegation recalling that when consideration was being given to the location of offshore salmon net fishing lines in the eastern Pacific Ocean at the Seattle Conference in 1957, a chart showing the location of the proposed line in Alaska was not available; that Canada had requested a copy of such a chart showing a definitive line; and that this was made available some months later for study. The Canadian Delegation stated that it was apparent that the offshore salmon net fishing line in Alaska was located using a different basis for its location than was used in defining the lines agreed to along the coasts of California, Oregon, Washington and British Columbia.

The Canadian Delegation requested that consideration be given to adjusting the line in Alaska in order to have it conform more closely to the offshore salmon net fishing lines agreed to for all other areas. It was stated that particular attention should be given to relocating the line in southern Alaska where net

fisheries were known to affect seriously in some years the management of certain salmon stocks originating in streams of northern British Columbia.

The United States Delegation stated that there were administrative problems involved in this connection in the Alaska area. Most of the fisheries were operating close to land in localities where fishing had been carried out in a traditional manner for the past 50 years or more. Some of the stocks could not be harvested efficiently by any other means. It was the understanding of the United States that the objective of the offshore fishing lines was to prevent the development of major new offshore net fisheries or the expansion of existing fisheries. In the United States view this objective had been achieved. New net fisheries have not developed nor were the existing net fisheries in the waters of Alaska expanding.

The United States Delegation stated that if there were conservation problems caused by location of the line it would be happy to consider them. In this connection, the United States Delegation pointed out that its records indicated that the Canadian fishery in northern British Columbia near the International Boundary intercepted considerable quantities of salmon bound for Alaskan streams.

After an exchange of observations on the management problems associated with the salmon fisheries of southeast Alaska and northern British Columbia it was decided that the matter should be referred to an Ad Hoc Committee for further review. This committee subsequently submitted the following report:

> Report of Ad Hoc Committee on the Review of Offshore Salmon Net Fishing Lines
>
> "The Ad Hoc Committee on the Review of Offshore Salmon Net Fishing Lines held several meetings during the current week. The Committee discussed the location of the salmon net fishing lines which are set out in the Summary Proceedings of the Conference on Co-ordination of Fisheries Regulations held in Seattle, Washington in February 1957. The Committee reached no agreement with respect to adjustment of the offshore salmon net fishing limits of Alaska and of British Columbia".

The Canadian Delegation made the following statement in commenting on this report:

> "With reference to the discussions which have taken place at this Conference, at both the general sessions

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and at the meetings of the Ad Hoc Committee on Review of Offshore Salmon Net Fishing Lines, it seems to the Canadian representatives that, with respect to the offshore salmon net fishing lines, there is an obvious difference between the Canadian and United States lines in the northern areas. From the Canadian point of view this difference arises from the lack of a uniform basis for determining the location of the offshore salmon net fishing limits in Alaska as compared with that in Canada.

"It is stated in the Summary Proceedings of the Conference on Co-ordination of Fisheries Regulations held in Seattle, Washington in February, 1957, under Major Agreements Reached (4) and (5) -

'(4) The line described in the Alaska Fishery Regulations was appropriate.

In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the 'waters of Alaska' as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible.

'(5) All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines whenever example..ce indicated that an adjustment was required.'

"It was Canada's understanding at the Seattle Conference that when the chart showing the definitive line for Alaska had been received and reviewed we would have an opportunity, as outlined in Major Agreement No. 5 of the Seattle Conference, to meet again and propose necessary adjustments of the lines as was the procedure followed at the Seattle Conference in considering the location of the lines in all other areas.

"The chart requested by Canada at the Seattle Conference (1957) was received from the United States some eight months after the Conference. The chart was examined and Canada

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is still of the view that the Alaska line is not definitive. Because of this Canada made a formal request to the United States for the opportunity to review and consider adjustments in the Alaska line in order to achieve uniformity in the basis for locating offshore salmon net fishing limits in the eastern Pacific Ocean insofar as it could be done within practical and geographical limitations.

"Canada regrets that it has not been possible, at the present Conference, to reach agreement on matters relating to the offshore salmon net fishing limits in Alaska.

"Canada understands and appreciates the practical considerations and difficulties involved in attempting to adjust the Alaskan offshore salmon net fishing limits, but we consider that there should be uniformity, within practical limitations, of the basis on which the lines are established in all areas. Such basis of uniformity was established by Canada and by the States of Washington, Oregon and California.

"Because of the obvious difference in the bases used in establishing the offshore salmon net fishing limits in Alaska and in British Columbia, Canada has no alternative but to reserve the right to adjust the offshore salmon net fishing limits for British Columbia to conform with the basis used by the United States for Alaska".

The United States Delegation made the following statement with reference to this matter:

"The report of the Seattle Conference states with respect to offshore salmon net fishing lines that ' ... development of major offshore salmon net fisheries posed a serious management problem and that regulation of such fishing in the eastern Pacific Ocean was essential to the conservation of salmon stocks of North American origin'. No other objective for offshore salmon net fishing lines is given in the report.

"The report of the Seattle Conference also includes the following statement: 'The US Delegation stated that: The Secretary of the Interior now prohibits the taking of salmon by US Nationals in the Pacific Ocean outside the waters of Alaska north of Dixon Entrance and east of 175 degrees west longitude, except by means of trolling'.

"After consideration of various proposals by the United States and Canada, the following agreement was reached regarding the Alaska line:

> 'The line described in the Alaska Fishery Regulations was appropriate.
>
> 'In this connection, it was understood that the closing lines connecting headlands in Alaska which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the 'waters of Alaska' as this expression is used in Alaska Fishery Regulations, are not definitive.
>
> 'All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines wherever experience indicated that an adjustment was required'.

"From these statements it seems clear to us that the method or basis for constructing the salmon net fishing lines in Alaska was understood and was 'appropriate'. If this was not the case, there has been a most unfortunate misunderstanding.

"The current Conference has given consideration to adjusting the Alaska lines following the proposal of Canada that adjustment is required. It appears that conservation problems are involved where the fisheries of both countries operate on the same stocks of fish. The United States Delegation has proposed that the conservation problems created by the taking by the United States of quantities of salmon enroute to Canadian streams and by the taking by Canada of quantities of salmon enroute to Alaskan streams be studied by an Ad Hoc Committee to be set up by this Conference, and that all of the evidence on these problems in the possession of the Parties be supplied to this Committee, in order that a determination may be made as to whether an adjustment is required to resolve the conservation problem.

"If Canada considers that the solution of its conservation problems is so urgent that the delay thus entailed would be very damaging, the United States is prepared immediately to undertake the study of all pertinent data on the problem in order to resolve the problems of the Conference".

The report of the Ad Hoc Committee on Review of Offshore Salmon Net Fishing Lines was accepted.

The following joint resolution was adopted by the Conference:

> "This Conference, recognizing the desirability of reaching an early solution of problems of mutual concern related to the conservation and management of salmon stocks in southeast Alaska and northern British Columbia which became apparent during the Second Conference on Coordination of Fisheries Regulations, recommends to the Governments of the United States and Canada, that a committee be established as soon as possible to consider these problems and subsequently recommend appropriate action to insure continued effective conservation of those stocks".

It was agreed that such a committee would be established at an early date with instructions to submit a report as quickly as possible.

Troll Fishery Regulations

Under this item the United States Delegation stated it would like to have the current troll fishery regulations reviewed since there appeared to be certain exceptions in Canadian waters to the otherwise uniform regulations, and to discuss once again the principle of setting aside nursery areas for coho (silver) and chinook salmon for specific time intervals.

The Canadian Delegation requested information on the interpretation of the agreed opening date of April 15 for spring salmon fishing in California, Oregon and Washington. It was noted that this date was a fishing date in Canada while it was understood that this was a landing date in the United States.

It was agreed that these matters should be referred to an ad hoc committee and a report submitted to the Conference.

The following report was presented by the Ad Hoc Committee on Troll Fishery Regulations and accepted as submitted by the Conference:

Report of Ad Hoc Committee on Troll Fishery Regulations

> "1. The Committee considers it desirable to record the troll regulations now in effect throughout the outside waters of the Pacific Coast as an illustration of the uniformity so far achieved in the management of this fishery. The general season and size limits are as follows:

Chinook (Spring)

1) Commercial

Open season April 15 - October 31 in all jurisdictions except California (May 1 - September 30).

Minimum size 26" overall except in Alaska where measurement is fork length.

In British Columbia inside the offshore fishing line a minimum size of 3 pounds in the round or 2½ pounds dressed, prevails. Also in British Columbia inside the offshore fishing line the open season for Springs (chinooks) is Feb. 1 to Nov. 30.

2) Sport fishery (tidal waters)

(a) British Columbia

i. With two exceptions, where smaller bag limits are enforced, the province-wide daily bag limit for salmon in tidal waters is four salmon or eight grilse (salmon under three pounds in the round) or not more than eight salmon and grilse in the aggregate.

ii. No person can have in possession more than three days bag limit at one time.

iii. The province-wide minimum length of any salmon which may be taken by sports fishing in tidal waters is eight inches.

(b) Alaska

Sport limit (S.E. Alaska) 50 pounds and 1 fish, or 3 fish. Season April 15 - October 31 in outside waters; no closed season inside except locally.

(c) Washington

No closed season. Minimum size 20 inches in Strait of Juan de Fuca and Pacific Ocean. Bag limit 3 fish, with possession of 6. Inside waters same except minimum size 16".

(d) Oregon

For landings from outside (non-territorial) waters daily bag limit of 2 fish with 4 in possession. Minimum size south of Tillamook Head 20 inches; north of Tillamook Head 22 inches.

(e) California

Season: Approximately February 15 to November 15 to nearest weekend. Minimum size 22 inches with bag limit 5 per day south of San Francisco Bay. No bag limit to north of San Francisco.

Silvers (coho)

1) Commercial

Open season British Columbia June 16 - November 30 inclusive. Washington and Oregon June 15 - October 31, California May 1 - September 30, Alaska - July 1 - September 20.

Minimum size California 26", Oregon none, Washington 22". British Columbia 3 pounds in round or 2½ pounds dressed. Alaska none.

2) Sport Fishery (Tidal Waters)

In British Columbia sports fishery regulations applicable to Springs (Chinooks) also apply to Silvers (Coho). State regulations substantially correspond to Chinook Regulations, except for Alaska where there are no sport regulations on Silvers (Coho).

"2. The Committee recognizes that contrasting opinions exist as to the biological soundness of minimum size limits for the troll salmon fishery. Experiments conducted in Oregon and Washington during the spring of 1959, together with continuing sampling records of length-frequency and age composition of commercial catches may ultimately permit evaluation of hooking mortality or of more appropriate size limits to protect immature fish. In the meantime present general size limits appear to be supported by economic considerations and to be acceptable to the fishermen. The Committee concludes that under present circumstances the minimum size limits prevailing in outside waters should be continued in effect pending the development of data which demonstrate that these limits or other limits defeat the conservation objectives. By the same token there is no urgency now to enact absolute uniformity in the coho size limits where disparity exists.

The Committee further recognizes that the sport salmon fishery constitutes a growing management problem and that the regulations for sport salmon fishing in tidal waters depart widely from any common pattern and reflect localized conditions in the various jurisdictions. In the present state of knowledge of the pressures actually exerted by the sport fishery, the most practical course is for each jurisdiction to apply such added restraints as seem appropriate in the light of local conditions.

"3. The Committee had access to no information which would indicate that it is possible at this time to define salmon nursery areas with sufficient precision to permit the setting up of such areas as a practical management measure. Such studies as have been conducted lead to the apparent conclusion that where concentrations of immature fish occur such concentrations

are highly variable in time, place and density. The Committee would reiterate the 1957 endorsement of the principle of setting aside such sanctuary areas but it would be premature to establish any such areas upon the basis of present knowledge of the ocean distribution of the age groups which it is desired to protect.

"4. The Committee considered the potential complications arising from the fact that in Canada the law is sufficiently explicit to prevent any pre-season fishing by the troll fleet. In the States landing laws are the measures which must be relied upon to make opening dates effective, but there has been some evasion by vessels which are free to leave port prior to the opening date. No problem in this connection exists within territorial waters. California, Washington and Oregon in 1958 and 1959 have enlisted the co-operation of the fishermen in respecting the opening date as a fishing date, and they have intensified enforcement. As a result the abuse has been reduced to negligible proportions at this time. However, the Committee and the administrators concerned recognize that the co-operative response may not continue indefinitely and that legal loopholes should be eliminated. The Committee strongly recommends that the States seek corrective legislation, either State or Federal, which will assure that no troll salmon fishing can take place outside of territorial waters in advance of the legal opening of the season".

Trawl Fishery Regulations

The Canadian Delegation requested information regarding the existing trawl regulations for petrale sole in the states of Oregon and Washington since it was believed that in some areas the regulations agreed to at the 1957 Seattle Conference had been amended recently. The regulations agreed to at the Seattle Conference had been brought into effect immediately in British Columbia and were still in effect.

The United States Delegation advised that the regulation limiting the incidental catch of petrale sole to 3000 pounds not to exceed two trips per month had been found too restrictive and the following action had been taken -

In Washington State the regulation was amended to permit trawl fishermen to land incidental catches of petrale sole of 3000 pounds or not more than 8 percent of the total catch of any one trip. When this amendment was made effective the fishermen agreed not to operate in areas known to be spawning areas for petrale sole.

It appeared that the amended regulation served a useful conservation purpose since the catch of petrale sole for the months of January to April inclusive amounted to 2,903,[illegible] pounds in 1957 and 248,334 pounds in 1958. In 1959 the catch from January to March inclusive amounted to approximately 80,800 pounds.

In Oregon it had also been found that this particular regulation proved too restrictive and in order to obtain the opinions of other interested agencies before amending the regulation the following letter was forwarded to the Washington State Department of Fisheries and the Department of Fisheries in Vancouver, B.C., by the Oregon State Fish Commission -

> "As a result of an agreement made at the Conference on Co-ordination of Fisheries Regulations between Canada and the United States held on February 27 - 28, 1957, in Seattle, Washington, the State of Oregon has put into effect rather stringent regulations regarding the taking of petrale sole during the spawning season. The specific purpose of the regulation is to protect the stock of winter spawning petrale sole off the Esteban Deep. The Oregon regulation provides for a maximum of 3,000 pounds of petrale sole during the period from December 20 to April 15 of the following year with a limit of two trips a month.
>
> It is the opinion of the Oregon Fish Commission that this regulation is imposing undue hardship on the Oregon otter trawl fishermen. Because of the distance from the Esteban fishing grounds and because of adverse weather conditions during the winter season, there appears to be no need for a two trip limit by Oregon boats to protect the Esteban petrale sole spawning stocks. If our Oregon boats are lucky enough to make two trips in a month and catch any petrale sole at all on each trip, on subsequent trips they must discard all of this species. There is also some feeling that the 3,000 pound limit is too stringent for Oregon boats and that a 5,000 pound limit would act just as effectively to keep our vessels from fishing the Esteban Deep.

> The Oregon Fish Commission would like to take action to modify the regulations with regard to Oregon petrale sole fishermen, but we also want to be sure that such action is agreeable with the Washington and Canadian fisheries staffs.
>
> I would appreciate very much receiving your comments regarding this situation, and also your suggestions about procedures to follow if you think a change in the regulation is acceptable".

Since no objections were received Oregon rescinded the two trip a month regulation and added an eleven inch size limit. Further, a scientific investigation to obtain more essential information regarding the trawl fisheries has been undertaken in co-operation with the U.S. Fish and Wildlife Service.

It was agreed that these and other matters related to the trawl fishery of the eastern Pacific Ocean should be referred to an ad hoc committee for review.

The Ad Hoc Committee on Trawl Fishery Regulations presented the following report to the Conference:

<u>Report of Ad Hoc Committee on Trawl Fishery Regulations</u>

> "At the 1957 Conference on Co-ordination of Fisheries Regulations, agreement was reached on -
>
> 1) A uniform closed season on petrale sole from December 20 to April 15 in each year.
>
> 2) A maximum incidental catch during this closed season of 3,000 pounds of petrale sole per trip not to exceed two trips per month.
>
> "This agreement involved Oregon, Washington and the British Columbia area of Canada. California was to take such action as necessary to prevent the use of its ports for the purpose of evading regulations in northern areas.
>
> "Regulations complying with the agreement were implemented by Oregon, Washington and Canada in 1957.

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In the winter of 1958-59 modifications were effected by Oregon and Washington and are now in force as follows:

In Oregon the two-trip limit of incidental landings during the closed period was abolished. However, the 3,000 pound limit per trip was retained.

In Washington the trip limit on incidental landings of pacific cole was modified to allow 2,000 pounds or 5 percent of the total landing per trip during the December 20 to April 10 closed period. This was made on the understanding with the fishermen that they would avoid areas of spawning concentrations of pacific cole. The two-trip limit on incidental landings was retained.

"As these modifications were made only recently, the degree to which they may affect the intent of the original agreements cannot be completely assessed at the present time.

"Regarding trawl mesh regulations, there is at present limited coast-wide uniformity in minimum mesh size because of local problems relating to the capture of dogfish and Pacific 'ocean perch'. The value of a 4½ inch minimum mesh size is recognized as an effective means of minimizing the capture of undersized fish and should be adopted wherever and whenever possible.

"Regarding the minimum size of blackcod, uniformity of regulations now exists in the principal areas of concern namely, Oregon, Washington and British Columbia. Similar uniformity now exists with regard to seasonal restrictions on the blackcod fishery, as a result of recent action in Oregon and Washington. There are now no seasonal closures.

"This Committee recommends establishment of a continuing group made up of administrative and technical representatives of Oregon, Washington and Canada to perform the following functions:-

1. To review proposed changes in trawl regulations affecting fisheries of common interest before they are implemented.

2. To review the effectiveness of existing regulations.

3. To exchange information on the status of bottom fish stocks of mutual concern and to co-ordinate wherever possible programmes of research.

4. To recommend the continuance and further development of research programmes in order to provide a basis for future management of the trawl fishery.

"This Committee also recommends that the exchange of catch statistics as currently co-ordinated by the Pacific Marine Fisheries Commission be expanded to include monthly figures by area. For areas of overlapping interest, co-ordination of statistics of fishing effort should be attempted where possible".

During the discussion on this report it was agreed that a decision would be made by each agency concerned regarding the appointment of representatives to serve on the "continuing group" recommended in the report and that the names of the representatives would be exchanged as soon as possible. Meetings of this group would be held when convenient, perhaps at the time of the annual meeting of the Pacific Marine Fisheries Commission, and industry representatives would be called upon from time to time in an advisory capacity if required.

The report of the Ad Hoc Committee on Trawl Fishery Regulations was accepted by the Conference.

Fraser River Sockeye - Johnstone Strait

The United States Delegation stated that it had requested an exchange of views regarding the run of Fraser River sockeye through Johnstone Strait in 1959 as an agenda item for this Conference in order to clarify its thoughts regarding the following problems which existed in its opinion -

1. The interest of fishermen of the United States in a share of the run.

2. The management problem in the Fraser River related to the provision of adequate escapements to all tributaries as affected by the large catches in Johnstone Strait.

The Canadian Delegation stated that it had been made clear in the exchange of letters between the United States State Department and the Canadian Department of External Affairs preceding the present Conference that Canada maintained the view that since conservation of sockeye salmon of the Fraser River was covered by an existing Convention between Canada and the United States, a conference on the co-ordination of fisheries regulations was not the proper place to discuss any matters related to sockeye salmon of the Fraser River. Canada had agreed, however, to an exchange of views on this subject at the Second Conference on Co-ordination of Fisheries Regulations on the understanding that the views expressed would be considered informal and unofficial.

It was agreed that the Director of the International Pacific Salmon Fisheries Commission should be asked to provide any information available pertinent to the problem under consideration.

In order to obtain as much factual information as was available concerning the nature of the sockeye run in question, the United States Delegation questioned the Director with regard to an estimate of the number of sockeye from the Fraser River that approached the river by way of Johnstone Strait in 1958; the size of the total run to the Fraser River in 1958; the number of sockeye which survived the Johnstone Strait fishery and entered the Convention area; the dependence of certain Fraser River tributaries on escapement of sockeye through Johnstone Strait; special management problems created by the Johnstone Strait fishery in 1958.

The Director of the International Pacific Salmon Fisheries Commission replied to all these questions stating that in recent years the percentage of the total Fraser River sockeye run caught in Johnstone Strait had been increasing and that in 1958 the estimated figure was approximately 22 percent; the total run of sockeye amounted to 19 million fish in 1958; it had not been possible to ascertain the number of salmon reaching the Fraser River from Johnstone Strait; it appeared the earlier runs to the Fraser River passed through Johnstone Strait in greater volume by percent; very serious management problems existed in 1958 since the summer runs appear to be more vulnerable to fishing gear and special closures were required to provide adequate escapement of these summer runs. Conversely such closures were not required for the later Adams River run which approached through the Strait of Juan de Fuca and the escapement was successful.

Mr. Herrington pointed out that in the United States view, occurrences such as that which took place in 1958, worked an inequity upon United States fishermen by depriving them of a share of the harvest, although they had shared equally with Canada in bearing the cost of developing and maintaining the harvest. The inequity would, of course, become greater should such occurrences become more frequent. This inequity would be more serious when the entire escapement for the Fraser River was taken from that part of the run passing through the Strait of Juan de Fuca, rather than being taken proportionately from both parts of the run. This had been the situation in the 1958 season, a situation which was the cause of some concern on the part of the United States.

The Canadian Delegation took note of the United States views with regard to these problems and stated that there were no Canadian views to be expressed during this informal and unofficial discussion.

CLOSING REMARKS

The United States Delegation stated - "We are gratified that the Conference has been able to reach agreement on two of the important items before it, but at the same time we are somewhat disappointed that greater progress was not made.

"We are also much disappointed with regard to the response of the Canadian Delegation in respect to the exchange of views on the run of Fraser River sockeye through Johnstone Strait in 1958. In an exchange of communications between the Canadian Department of External Affairs and the United States Department of State, it was agreed that there would be such an exchange. The information placed in the record of the Conference regarding the very large size of this run in 1958 and the effect on the conservation management programme of the International Pacific Salmon Fisheries Commission makes this problem a matter of very considerable importance to the United States fishermen and the United States Government. In view of this importance the contribution of the Canadian Delegation to the agreed exchange of views was rather short of what we felt we could expect in the light of the communications between governments. We look forward, however, to the time when a more adequate discussion of this important matter can take place".

The Canadian Delegation stated that while a good deal of progress was achieved on certain agenda items progress on other items had fallen short of the Canadian expectation. However, the Conference had proved of value to the Canadian Delegation and it was to be expected that solutions to the new problems of mutual concern which became apparent during the Conference would soon be found.

With regard to the problem of Fraser River sockeye - Johnstone Straits, the Canadian Delegation expressed regret that the Canadian position was a source of disappointment to the United States Delegation but maintained that in the Convention with this was not the proper forum for discussion of this problem and only informal and unofficial views could be exchanged.

APPENDIX 1

SECOND CONFERENCE

ON

CO-ORDINATION OF FISHERIES

REGULATIONS

MANAGEMENT A.C. - APRIL 21 - 26, 1947

1. CALL TO ORDER.
2. OPENING REMARKS.
3. APPOINTMENT OF CHAIRMAN.
4. SECRETARIAT.
5. INTRODUCTIONS:
   (a) Official representatives.
   (b) Advisors.
   (c) Observers.
6. PRESS RELATIONS.
7. APPOINTMENT OF AD HOC COMMITTEES.
8. COHO SALMON - JUAN DE FUCA STRAIT:
   (a) Report of investigations.
   (b) Consideration, in the light of the scientific findings, of the location of the line delimiting offshore waters across Juan de Fuca Strait.
9. REVIEW OF OFFSHORE SALMON NET FISHING LINES.
10. TROLL FISHERY REGULATIONS.
11. OTHER BUSINESS:
    (a) Trawl Fishery Regulations.
    (b) Fraser River Sockeye - Johnstone Strait.
12. ADJOURNMENT.

For Release

Vancouver, B.C.
25 April, 1957.

Canadian and United States representatives to the Second Conference on Co-ordination of Fisheries Regulations ended their meetings in Vancouver yesterday having reviewed in detail regulations with respect to the sockeye salmon and herring fisheries in the Pacific as recommended and agreed upon at the original Conference in Seattle in 1947.

The meetings opened with discussion concerning the results of the co-ordinated research program on sockeye salmon undertaken by Canada and the United States following the first Conference at Seattle and continued to their present day. The special problems in the area adjacent to the Pacific Coast Indian Reserve line at the entrance to the Straits of Juan de Fuca. Also under discussion were offshore and on net fishing lines, lines seaward of which salmon may not fish. It was considered review of current troll and trap fishery regulations and the procedures adopted at the original Conference for co-ordination of these regulations for each of these fisheries; and the large runs of sockeye in 1956 through Johnstone Strait to the Fraser River.

A special committee was set up within the Conference to consider the results of the co-ordinated research program carried out by the Fisheries Research Board of Canada and the Washington State Department of Fisheries. During the course of this investigation nearly 7,000 coho were tagged in the Straits of Juan de Fuca and in addition several thousand fish were examined in order to develop knowledge on the composition of the fishery which of coho salmon originate with that of coho stocks spawning inside the Boundary-Treaty line; the maturity of coho salmon in the ocean; areas and the timing and extent of eastward migration of coho salmon in the Straits of Juan de Fuca. After considering the special committee's report, the Conference reached an agreement on the location of the Boundary-Treaty line. Arrangements were made to establish a committee composed of representatives of Canada and the United States to continue consideration of this problem.

With particular reference to Alaska and Northern British Columbia, the committee considered the location of the current salmon net fishing lines, and the desirability of extension of the lines. No agreement was reached on extension of the lines but in order to deal further with the problem in the area, the Conference adopted the following resolution - "This Conference, recognizing the desirability of reaching an early solution of problems of mutual concern relative to the conservation and management of salmon

stocks in southeast Alaska and northern British Columbia, which became apparent during the Second Conference on Co-ordination of Fisheries Regulations, recommends to the Governments of the United States and Canada that a committee be established as soon as possible to consider these problems and subsequently recommend appropriate action to ensure continued effective conservation of these stocks".

With regard to troll and trap fisheries, the Conference considered that the regulations had been essentially effective but it was felt an improved procedure for co-ordination is desirable.

The Conference took note of the United States expression of serious concern about the reduction in the quantities of Fraser River sockeye entering Convention waters in 1956; the possible effects of similar reductions on the management programs of the International Pacific Salmon Fisheries Commission; and the possible contribution of such large reductions in connection with the provisions of the Convention relating to division of the catch between United States and Canadian fishermen.

The meetings, which were held in the Board Room of the Custom House, were attended by officials from Washington, D.C., Ottawa, members of the State Legislatures, and officials of the Pacific Coast States as well as commissioners of the Pacific Marine Fisheries Commission and advisors from industry.

In attendance were United States Delegates - W.C. Herrington, Special Assistant to the Under Secretary of State; Stuart Blow, Department of State; D.L. McKernan and W.W. Terry of the United States Fish and Wildlife Service; M.E. Deane, Washington Department of Fisheries; and A.T. Day, Oregon Fish Commission.

United States Advisors were Representative J.E. Longworth, Alaska State Legislature; J.T. Charnon and C.T. Murry, Jr., of the United States Fish and Wildlife Service, Alaska; R.R. Parker, Alaska Department of Fish and Game; W.C. Jones, Pacific Marine Fisheries Commission, Portland; R.J. Tesser, American Consul, Vancouver; S.J. Matthiesen, United States Fish and Wildlife Service, Seattle; A.W. Schaefer, Oregon Fish Commission, Oregon; R.T. Bowsley, C.F. Pautzke, H.M. Jenson, and E.D. Jewett, all of the Washington Department of Fisheries; R. Van Cleve, College of Fisheries and W.E. Royce, Fisheries Research Institute, University of Washington, Seattle;

- [illegible] -

[illegible] Culbertson, Alaska Salmon Industry, Inc., Seattle; [illegible], Fishermen's Marketing Association and Northwest [illegible] Association, Seattle; H.B. Frisle, Nakat Packing Corp., Seattle; [illegible] O'Neill, Association of Pacific Fisheries, Seattle; B.B. Johnston, Fishermen's Co-operative Association, Seattle; N.C. Mladinich, Purse Seine Vessel Owner's Association, Tacoma; [illegible] Johnson, Alaska Fishermen's Union, Seattle; [illegible] Colvin, Puget Sound Gillnetters Association, Anacortes; and J.N. Plancich, Fishermen's Packing Corp., Anacortes, Washington.

Also attending the Conference was G.H. Reynor, United States Consul General Vancouver.

The Canadian Delegates were - G.R. Clark, Deputy Minister of Fisheries, Ottawa; Wm. H. Sprules, Department of Fisheries, Ottawa; and from the Department of Fisheries, Vancouver, B.C., Mr. A.J. Whitmore and C.R. Levelton.

Canadian advisors were - Dr. A.W.H. Needler, Dr. J.C. Stevenson, Dr. D.J. Milne, Dr. K. Ketchen and F.C. Wittler of the Fisheries Research Board of Canada, Nanaimo, B.C.; S.L. Young, R.E. McLaren, Captain M.B. Gay and [illegible] Cameron of the Department of Fisheries, Vancouver; J. Cameron, International North Pacific Fisheries Commission; C. Clark and [illegible] Brajcich, Fishing Vessel Owner's Assoc. of B.C.; R. Nelson, Hon. J. Sinclair, S. Furney and D.F. Miller, Fisheries Association of B.C.; L. McElhinney, Pacific Trollers' Association; G. Williams, Native Brotherhood of B.C.; D.E. Baker, B.C. Fishermen's Independent Co-op. Association; R.H. Payne, H. Stevens, P. Jonassin and [illegible], United Fishermen and Allied Workers' Union; P.J. Williamson, Prince Rupert Fishermen's Co-op. Association; F. Rolley, B.C. Gillnetters Association; and J. Vukic, B.C. Purse Seiners.

Attending as observers were L. Royal and A. Cooper representing the International Pacific Salmon Fisheries Commission, New Westminster, B.C.

DX DE

OPERATION ORDER
C17CGD No. 12-58

Commander, 17th Coast Guard District
Juneau, Alaska

9 May 1958

Task Organization

a. USCG Air Detachment, Kodiak	CAPT C. TIGHE (1413) USCG
b. USCG Air Detachment, Annette	CDR T. H. MacWHINNEY (2655) USCG
c. USCGC NORTHWIND	CAPT T. R. MIDTLING (1385) USCG
d. USCGC STORIS	CDR H. L. WOOD (1523) USCG
e. USCGC BITTERSWEET	LCDR B. E. KOLKHORST (3323) USCG
f. USCGC CITRUS	LCDR E. R. THARP (3345) USCG
g. USCGC CLOVER	LCDR J. P. STEWART (3636) USCG
h. USCGC HEMLOCK	LT. W. E. CALDWELL (4097) USCG
i. USCGC SEDGE	LCDR K. L. MOSER (3563) USCG
j. USCGC SORREL	LCDR R. D. FULLER (4295) USCG
k. USCGC SWEETBRIER	LCDR C. L. TURNER (2728) USCG
l. USCGC WIMBALL	LT. R. E. ANDERSON (5212) USCG
m. USCGC WHITE HOLLY	CHBOSN L. L. GROVES (26391) USCG

1. General Situation

a. The enforcement of the various international fishing treaties in Alaska is the joint responsibility of the United States Coast Guard and the United States Fish and Wildlife Service. These include the North Pacific Halibut Act and the North Pacific Fisheries Act, 1954 as amended July 1957. Designated patrols for the enforcement of the North Pacific Halibut Act were assigned in District OP. Order No. 5-58 and 8-58. The fishing for or taking of Salmon, except by trolling, by any person or fishing vessel, subject to the jurisdiction of the United States, on the high seas, off the British Columbia Coast and all waters of the North Pacific Ocean and Bering Sea, North of Dixon Entrance and east of 175 degrees West Longitude, exclusive of the waters of Alaska which extend three miles seaward from the coast, is in violation of the North Pacific Fisheries act of 1954 as amended July 1957.

2. Mission

a. To establish patrols in designated waters on the high seas in support of the enforcement of the North Pacific Fisheries Act, 1954 as amended July 1957.

3. Task

a. USCG Air Detachment, Kodiak, to provide two patrols, one on or about 26 June and the other, on or about 10 July 1958, in connection with regularly scheduled logistic flights to Sarichef, of the area offshore, north of the Alaskan Peninsula and Unimak Island, with particular emphasis to the Port Moller Area. Contact Fish and Wildlife Service Agent, Sand Point, through the Fish and Wildlife Service Agent, Kodiak, prior to patrols and coordinate patrols with him, provide such transportation as he may request.

b. USCG Air Detachment, Annette, to provide five patrols, one each on or about 25 June, 10, 25 July and 10, 25 August, 1958, of the area offshore from Cape Addington, Noyes Island, South to Cape St. James, Queen Charlotte Island.

-1-

Operation Order, C17CGD No. 1258, May 9, 1958. Commander, 17th Coast Guard District, Juneau, Alaska.

Div. of Resource Mgmt., Wn.

Pac. arch.

OPERATION ORDER
C17CGD No. 1-58

Commander, 17th Coast Guard District
Juneau, Alaska

9 May 1958

Task Organization

a. USCG Air Detachment, Adak
b. USCG Air Detachment, Annette
c. USCGC MCCULLOCH
d. USCGC STEVENS
e. USCGC [illegible]
f. USCGC CITRUS
g. USCGC CHEROKEE
h. USCGC [illegible]
i. USCGC SPAR
j. USCGC SORREL
k. USCGC SAMUEL B. ROBERTS
l. USCGC KIMBALL
m. USCGC WILLOW (WAGL 402)

CAPT C. [illegible] (USCG) [illegible]
CDR W. H. [illegible] (USCG) [illegible]
CAPT L. A. [illegible] (USCG) [illegible]
CDR L. T. [illegible] (USCG) [illegible]
LCDR F.M. [illegible] (USCG) [illegible]
LCDR E. R. [illegible] (USCG) [illegible]
LCDR J. [illegible] (USCG) [illegible]
LT. L. E. [illegible] (USCG) [illegible]
LCDR T. [illegible] (USCG) [illegible]
LCDR J. [illegible] (USCG) [illegible]
LCDR C. [illegible] (USCG) [illegible]
LT. [illegible] E. [illegible] (USCG) [illegible]
LCDR L. [illegible] (USCG) [illegible]

1. General Situation:

a. The enforcement of the [illegible] to the joint [illegible] States Fish and Wildlife Service and U.S. North Pacific Fisheries [illegible] patrols for the enforcement of [illegible] Act of [illegible] by trawling, in certain areas of the United States, as [illegible] waters of the North Pacific Ocean [illegible] of 175 degrees West [illegible] three miles seaward from [illegible] act of 1954 as amended July [illegible] 1957.

2. Mission:

a. To establish patrols in designated areas on the high seas in support of the enforcement of the North Pacific Fisheries Act, 1954 as amended July 1957.

3. Execution:

a. USCG Air Detachment Adak, to provide two patrols, one on or about 26 June and the other on or about 10 July 1958 in conformity with aerial schedules [illegible] Base Unit of the area offshore north of the Aleutian Peninsula and Islands with destination changes to meet Fishery Area Patrols. Fish and Wildlife Service Agent, Adak, is the Fish and Wildlife Service Agent, [illegible] patrols and coordinate patrols with him, provide such transportation as may be required.

b. USCG Air Detachment Annette to provide three patrols, one each on or about 25 June, 10, 25 July and 10, 25 August 1958, of the area offshore from Cape Addington, Kupreanof Island to Cape St. James, Queen Charlotte Islands.

-1-

OPERATION ORDER
C17CGD No. 1-58 9 May 1958 Page 2

c. CGC KIMBALL to conduct two patrols. One each on 23 July and 6 August 1958, of the area from Cape Muzon to Cape Addington.

x. (1) All vessels and aircraft, when cruising in areas outlined in (a) and (b) above, shall be especially alert for the enforcement of this act.

(2) Vessels shall board all suspected violators of this act.

(3) Contact and coordinate patrols with local Fish and Wildlife Service Agents.

(4) In cases of violation of this act, all pertinent information such as, name of owner, the name, description and location of the vessel shall be reported to this office and the nearest Fish and Wildlife Service Agent as soon as practicable.

(5) The name, description, location, course and speed of all vessels with net gear on board in this area shall be plotted and reported.

(6) Submit a summary report to this office by 15 September 1958, on the number of hours and miles cruised, and the vessels sighted in the areas designated by this order.

4. Administration and Logistics

a. Logistics shall be in accordance with Annex "N" to Seventeenth Coast Guard District Operations Plan 1-57.

5. Command and Signal

a. Comply with Commander, Seventeenth Coast Guard District Operations Plan No. 1-57.

b. Communications shall be in accordance with Annex "D" to Seventeenth Coast Guard District Operations Plan No. 1-57.

c. Commander, Seventeenth Coast Guard District, Juneau, Alaska.

HENRY A. SCHOLL
By direction

Encls: (1) Additional Information on the North Pacific Fisheries Act and Patrols in conjunction with the enforcement of this Act.

(2) Laws and Regulations for Protection of the Commercial Fisheries of Alaska - 1958 (Dept. of the Interior Fish and Wildlife Service Regulatory Announcement 50)

DISTRIBUTION:

USCG AIRDET, KODIAK	(5)
USCG AIRDET, ANNETTE	(5)
USCGC [illegible]	(2)
USCGC STORIS	(2)
USCGC [illegible]	(2)
USCGC [illegible]	(2)
USCGC [illegible]	(2)
USCGC [illegible]	(2)
USCGC [illegible]	(2)
USCGC [illegible]	(2)
USCGC [illegible]	(2)
USCGC [illegible]	(2)
USCGC WHITE HOLLY	(2)

Mr. Howard [illegible], Assistant Regional Director - Fisheries Management, U. S. Fish and Wildlife Service (10)

ENCLOSURE I

ADDITIONAL INFORMATION ON THE NORTH PACIFIC FISHERIES ACT AND PATROLS IN CONJUNCTION WITH THE ENFORCEMENT OF THIS ACT

1. North Pacific Fisheries Act, 1954 was amended July 1957 to include enforcement of a provision to prohibit U.S. Nationals from netting salmon on the high seas (British Columbia Coast). This means outside of the three(3) mile limit.

2. In Alaska, a law prohibits netting of salmon on the high seas, and in July 1957, Canada enacted such a law. The Pacific Coast States have laws which prohibit the unloading of fish so caught in any of their ports. The act as amended, regulates fishing off the coast of Canada. The Japanese will abide by voluntarily prohibiting their Nationals from such fishing.

3. Areas of Probable fishing are as follows:

(1) Near Dixon Entrance
(2) Cape Muson to Cape Addington
(3) Off Queen Charlotte Islands.
(4) North of Alaska Peninsula, particularly near Port Moller or other areas where rivers enter Bristol Bay.

4. Areas would extend from three (3) miles to about 10-15 miles offshore (legal up to 3 miles).

5. Season for Southeast Alaska extends from Mid July to the first of September.
Season for Bristol Bay Area extends from Mid June to Mid August.

6. Vessels engaged in this illegal fishing would usually be large types equipped with net rollers on the stern similar to regular seniers. Nets are special, large and deep, usually nylon and buoyed. Nets cannot be used for any other purpose.

7. Investigate any large type vessel which may be found in such areas by:
(1) Plotting position, course and speed.
(2) Name, nationality, description
(3) Observe dock gear, presence of nets or net handling equipment.
(4) Type of activity. (Whether engaged in fishing, etc.)
(5) Presence of nets in water, buoys visible, etc.

8. Report all vessels which may be engaged in this type of fishing to Commander 17th Coast Guard District and Fish and Wildlife Service for further evaluation.

9. Photos should be taken of vessels which appear to be in violation of this act.

10. Several persons should observe vessels violating this act to serve as witnesses in cases for prosecution.

SUMMARY OF CONSERVATION LAWS REQUIRING CG LAW ENFORCEMENT
SEVENTEENTH COAST GUARD DISTRICT

SUBJECT	LAW SOURCE (including more important provisions) Convention or Treaty	Federal Statutes	Federal Regulations	1 OCTOBER 1963 Coast Guard Law Enforcement Territorial Waters	High Seas
WHALING	International Whaling Convention 1946 (Effective 1948) Parties: CANADA RUSSIA U.S. OTHERS (Not JAPAN) 1. Establish Commission one member each party. 2. Whaling in accordance with provisions. 3. Each nation has primary responsibility for infractions by its own nationals, and by others within its exclusive jurisdiction.	16 U.S.C. 916 1. Unlawful to engage in whaling in violation of the Convention, Rules of the Commission, other Fed. Statutes and Regulations. 2. Requires licenses by whaling ships, factory vessels, etc. 3. Authorizes CG officer to arrest for violations in presence or view; authorizes searches. 4. SecInt authorized to promulgate regs & otherwise administer & enforce. 5. SecTreas (in coop. with SecInt) charged with primary responsibility for "enforcement activities.	50 CFR 230.1 thru 230.61 1. Licenses, seasons, records. 2. FWS designated for enforce. (Also, state employees may be designated as Fed. Law enforcement officers 230.61).	ALL vessels 1. Board by virtue multiple authority. (Primary 14 USC 89) 2. Search with "reasonable cause" to believe there is violation. 3. Arrest for violations in presence or view.	DOMESTIC 1. Same is in territorial waters FOREIGN A. Parties (Canada, Russia, others) 1. Exercise no legal authority. (Document violations for report to sovereign concerned.) B. Non Parties (Japan, others) 1. No violation document also Note: Area application - entire North Pacific Ocean
SEALING & Sea otters)	North Pacific Fur Seal Convention 1957 Parties: CANADA JAPAN RUSSIA U.S. 1. Establish Commission one member each party. 2. Sealing north of 30th parallel in accordance with provisions. 3. Enforcement by any nation on any other party. (It is to be noted that	16 U.S.C. 631 1. Unlawful to engage in sealing or sea otter hunting in violation of convention, etc. 2. Authority to arrest for violations in presence or view; searches with reasonable cause. 3. Guard on patrol to be maintained in water frequented by the seal herds. (ExOrd.7549 direct Commandant to use CG vessels.) 4. SecInt charged with	50 CFR 215 1. Administration of the Pribilofs - prohibits dogs liquor, controls visits to the rookeries.	ALL Vessels Same as under "Whaling" above	DOMESTIC 1. Same as above FOREIGN A. Parties (Canada, Japan, Russia) 1. May board & search on reasonabl cause (relates even to the boarding) th there is violation. Boarding Officer must have certifica in English, Russian, Japanese citing authority & issued by competent gover

993

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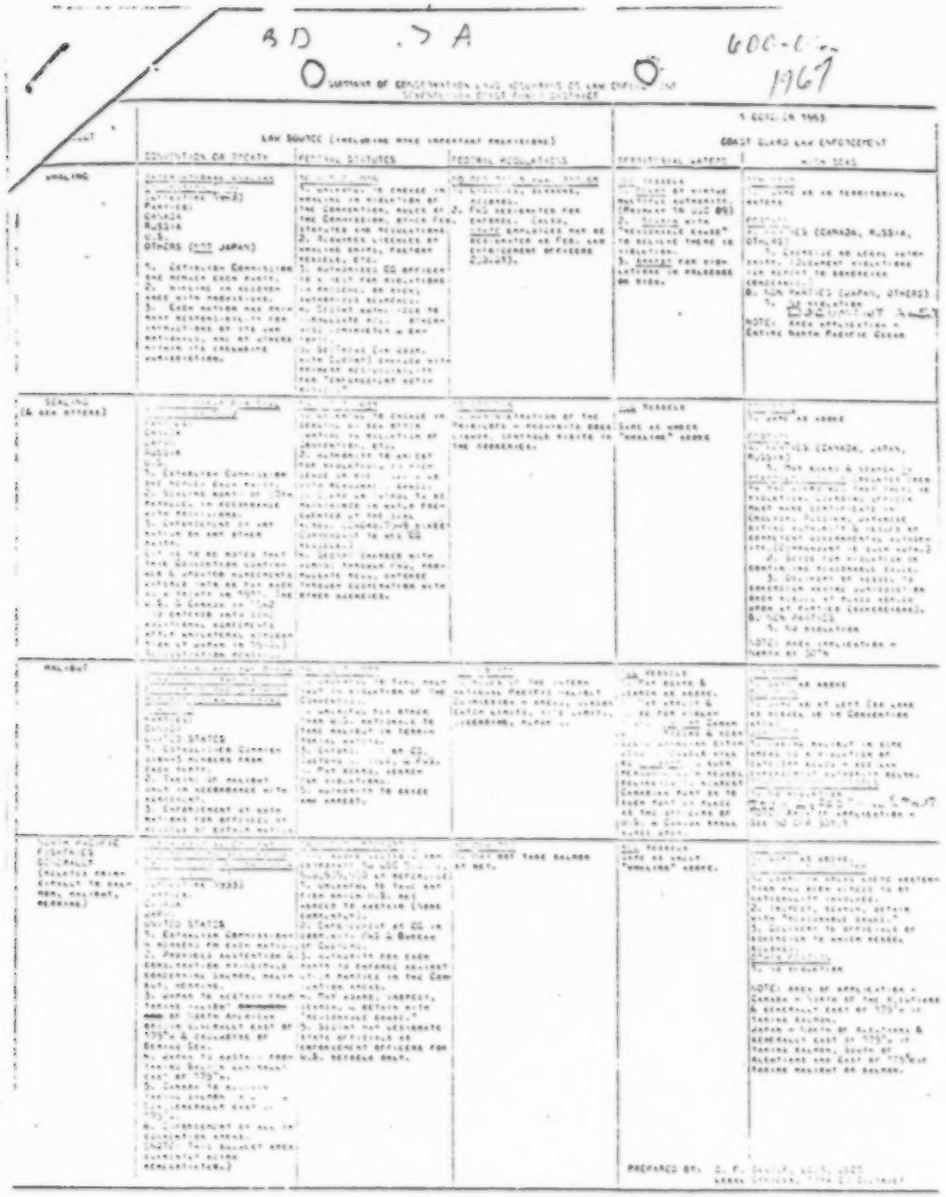

DX DJ

W. P. Studdert

JUN 30 1924
FISHERIES

BI-WEEKLY REPORT

OF MOVEMENTS IN ALASKA FIELD.

W.P.STUDDERT.

on Kittiwake

MAY

16 Left Port Graham 7:30 AM ; Arr. Seldovia 9: AM ; Left Seldovia 11 AM; Arr. Halibut Cove 1:45 PM. Remained at Halibut Cove issuing permits and discussing matters with fishermen for balance of day.

17 Left Halibut Cove 7:30 AM; Dropped anchor off Christiansen's Fox Ranch 9:30 AM; Hove-up and underway 11 AM; ARR. Seldovia 12:30 PM; Remained Seldovia receiving applications for permits until 6:30 PM; Arr. Port Graham 8:30 PM.

18 At Port Graham having machine work done on engine and making minor repairs to boat.

19 Left Port Graham 8:40 AM; Arr.Seldovia 10:15 AM ; Left Seldovia 11:20 AM; Arr. Halibut Cove 2 PM; Left Halibut Cove 3:15 PM; Arr. Ninilchik 10 PM; Left Ninilchik 11:30 PM.

20 Arr. Kenai 3:20 AM; Left Kenai 2:45 PM;

21 Arr. Anchorage 12:30 AM.

22-23 At Anchorage attending to matters pertaining to permits.

24 Left Anchorage 9:25 AM; ARR. Shorty Creek 2:35 PM; Left Shorty Creek 3:25 PM; Arr. Tyonek 4:25 PM; Left Tyonek 7:35 PM;

25 Arr. Anchorage 1;15 A.M. ; Arr. Tyonek 5:15 PM.

26 Left Tyonek 1:15 AM; Anchored off Kenai River 5 AM; Hove up 6:30 AM; Tied up Kenai 9 AM; Went ashore at canneries and town. Left Kenai 6:30 PM; Arr. Nikiski 8:30 PM; Left Nikiski 11:45 M.

27 Anchored above Polly Creek 4:30 AM went ashore among clam diggers and gained impression that clams were not plentiful;however,statements made by diggers were conflicting and the failure to secure more clams may have been due a general lack of experience in digging.
Left Polly Creek at 6 AM; Arr. Snug Harbor 9:45; The Polar Fisheries had packed at this date but 1700 c/s of half flats and 39 c/s of 'picnics'. Mr.Edney,superintendent of the plant,stated that at this time the clams were in poor condition,their appearance in the can being less white than at a time when they are fatter,which in his opinion would be during the month of June and when they would yield one third more meat.
These facts,if substantiated,seem to offer the basis for an advantageous closed season that would limit digging to a period when the quality of the clams is best,and production increased by 30% for the same quantity of clams taken. Left Snug Harbor 10:40 AM; Boarded the Halibut Steamer

Related to Safety

D-J

'ZAPORA' which was fishing off Anchor Point without a permit and without knowledge upon the master's part of the existence of a Reservation.
It was agreed between us that he should continue fishing, which he did as long as we had him in sight, and that he would take the matter up by radio with his headquarters while I communicated with the Bureau; and that we should apprise one another by radio of advices received. Boarded Halibut Steamer NEW ENGLAND, 1:10 PM, also fishing without a permit and had a similar understanding with her master. 4:35 PM Arr. Seldovia.

28 Left Seldovia 8:40 AM; Left The Kittiwake in Port Graham and taking the skiff pulled with Schroeder to a point where we could cross overland to English Bay, hoping to apprehend the fishermen at work in, or too near, the stream as my susupicions are that considerable illegal fishing may go on at that place which has no stream watchman this season.
No fishing was going on when we arrived.
Schroeder and myself made our way back to the lakes at the head of the stream which is of good size. We found three lakes, one probably four miles in length, the last lies several miles from the beach. A fuller investigation will be made of that spawning area later and a proper report submitted.
I found the work done in blasting away a part of the waterfall in the stream last year a considerable aid to the ascent of salmon.
6 PM returned to Port Graham.

29 Left Port Graham 9:50 AM; Arr. English Bay 10:30 AM; Left English Bay 11:40 AM; Arr. Seldovia 2:10 PM; Left Seldovia 9:15 PM; Arr. Halibut Cove 11:58 PM.

30 Left Halibut Cove 9:15 AM; Arr, head of Kachemak Bay 11:58 AM; Went ashore and proceeded up Fox River, a red salmon stream, to the first waterfall, nine feet high and flowing over a coal ledge in such a manner as to offer almost an impassible barrier to salmon. The waterfall is from seven to eight miles from the beach. Schroeder accompanied me, and we also found a log jam thrown across the stream by a recent freshet. The jam offered a material obstacle to the passage of fish. Returned to Kittiwake 10 PM.
Underway 10:50 P.M.; XXXXXXXXXXXXXXX

31 Arr. Halibut Cove 12:30 AM; Left Halibut Cove 8 AM; Arr. Seldovia 11 AM; 2:30 PM started up Seldovia River which is a large, clear stream that should be favorable for spawning purposes. A waterfall was found between tow and three miles above the beach. A large lake is said to lie about fifteen miles from salt water but as far as I can learn no red salmon are known to run up Seldovia River. Blasting away the waterfall which now forms a serious impediment and stocking the stream with fry might produce a valuable run of reds in this river. It is my plan to visit the lake when the time is right.

W. D. Huddert,

DX DO

JUN 25 1923

Seattle, June 20, 1923.

Baker, Bureau Fisheries, Cordova.

From Commissioner, quote, if Cook Inlet halibut fishing by vessel New England of San Juan Fishing and Packing Company is within three mile limit necessary secure permit (stop) You are authorized handle matter locally (stop) Report action taken, unquote.

Russell.

official business.

Field Superintendent.

copy to Washington office.

Telegram, Russell to Baker, June 20, 1923.

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DX D2

DEPARTMENT OF COMMERCE
BUREAU OF FISHERIES

Ketchikan, Alaska,

August 8, 1935.

Subject: Violations

Bureau of Fisheries

Juneau, Alaska

Gentlemen:

On the 4th instant, while patrolling waters in Pierce Canal, intercepted a thirty foot Canadian boat fishing for halibut in American waters close to the boundary. Captain Todd wired this office as follows:

"Holding two Canadian Jap fishermen boat seized while fishing for halibut in mouth of Edwards Passage stop Boat has no name no number no papers thirty feet long gas new awaiting your instructions"

During my service with the Bureau I had not had any experience with the seizure of Canadian boats and felt that the local Customs office could give me good advice in the matter. Customs officials recalled that about three years ago several American trolling boats had been seized by Canadian patrols and that a great deal of international correspondence resulted. They also informed me that in the past year the Canadian Government had been very lenient with small American fishing boats in Canadian waters. I was told that if our office seized the Canadian boat for such a minor offense, it might mean that American fishing boats would henceforth suffer from severe Canadian patrol.

To avoid the possibility of international complications it was thought best to release the Canadian boat being held by the Kittiwake. My instructions, by wire, to Captain Todd were as follows:

"Release boat stop Our policy to be lenient with Canadian boats fishing halibut close to boundary."

Very truly yours,

Clarence L. Olson

CLARENCE L. OLSON, Warden

cc: Washington
Seattle

Letter, Clarence L. Olson to Bureau of Fisheries, Juneau, Alaska, August 8, 1935.

Juneau, Alaska
August 13, 1935.

Subject: Violations.

Mr. Clarence L. Olson, Warden,
Bureau of Fisheries,
Ketchikan, Alaska.

Dear Mr. Olson:

This will acknowledge the receipt of your letter of August 8, 1935 relative to the apprehension by the patrol boat Kittiwake of a Canadian boat fishing for halibut in American waters of Pierce Canal close to the boundary line.

This office feels that the action you have taken in this matter is very proper and that such a policy should be pursued unless the practice of getting across the boundary into American waters becomes too habitual.

Copy of a letter from Mr. Thompson of the International Fisheries Commission relative to American trollers fishing in certain closed areas near Masset, British Columbia has been sent to you together with a copy of letter which I addressed to the Ketchikan Chronicle suggesting that a warning notice be run in the paper.

The practice as followed at present will, therefore, be continued unless instructions to the contrary are received from the Washington office.

Very truly yours,

Agent.

LGT:EB.

Copy to Washington office.
Copy to Seattle office.

Letter, Agent, Juneau, Alaska to Clarence L. Olson, August 13, 1935.

600-06
CR 1500-01

DX EB

December 27, 1968

Memorandum

To: Solicitor, Department of the Interior, Anchorage

From: Regional Director, [illegible]

Subject: United States v. State of Alaska, Civil No. 45-67

This is in response to the memorandum from Field Solicitor Richard [illegible] inquiry to Harry Kirkness and Walter Kirkness ... subject ...

Because of the large glacial runoff in Cook Inlet, halibut fishing in that area is confined to the inner regions essentially south of a line between Archer Point northwest of Homer and Chinitna Bay opposite the Inlet. As mentioned in Mr. Bradley's inquiry, Cook Inlet is not an area of intense halibut fishing and is exploited primarily by smaller local boats. Most of the halibut fishing vessels in the Kodiak area work on the east side of Cook Inlet on to the Kenai Peninsula area along the lower west side of the inlet. Alaska Validation Officers are usually by this agency in order that they may be familiar with the halibut fishing ... These validations are done principally to facilitate the periodic ... for the evaluation of vessels and gear used in the halibut fisheries. ... halibut grounds, but do perform technical services for the smaller local halibut fishing boats.

Cook Inlet has never been extensively fished by fleets of foreign nations. Vessels of Japan and the Soviet Union which are so prevalent elsewhere along Alaska's coast have never operated in Cook Inlet (the area north of the Barren Islands). Canadian vessels have infrequently fished for halibut in lower Cook Inlet but not to any extent during recent years. Apparently the question of Canadian halibut fishing in lower Cook Inlet is also being directly explored by the Department of Justice. The attached copy of a letter from the International Pacific Halibut Commission indicates that they have been queried on this subject. The only known foreign activity in the area, which we doubt has any significance, was the Japanese

Memorandum, Harry L. Rietze to Solicitor, Department of the Interior, Anchorage, December 27, 1968.

purchase of United States caught salmon in Cook Inlet in July and August of 1966. This venture was similar to an earlier Japanese purchase of American-caught salmon in Prince William Sound during July and August of 1964. Both these ventures were studied by the United States Government and found to be in accordance with the "abstention" requirements of the International North Pacific Fisheries Convention. Mr. Bradley asked about the information previously supplied the Department of Justice in Washington, D. C., concerning this subject. In response to a telephone inquiry from Walter Kirkness, who is now with our Central Office in Washington, D. C., we advised that we possessed no records of Japanese, Soviet, or Canadian fishing in Cook Inlet. Because of the urgency for this information, it was verbally passed to Mr. Kirkness for relay to the Department of Justice.

Regarding Mr. Bradley's question on prior regulations, the enabling act for the International Pacific Halibut Convention has been enforced by the Federal Government consistently since the 1930's. The current law was being enforced by this agency prior to statehood and is, of course, still applicable. Regulations of the Alaska Department of Fish and Game concerning halibut fishing were adopted in 1961 as Section 102.42 of their commercial fishing regulations. These regulations have been continuously since that time with minor revisions to make applicable the International Pacific Halibut Commission regulations for that particular year.

The applicability of the State's regulation 102.42 to vessels fishing in Lower Cook Inlet was also sought by Mr. Bradley. This Bureau has not been charged with enforcement of State fishery regulations and, therefore, we have never attempted to interpret this section or to speculate on its applicability to foreign or domestic vessels fishing in Cook Inlet. Concerning Mr. Bradley's specific question, we have no information which would indicate that the State waives or surrenders any requirements upon Alaskan fishing vessels in the lower Cook Inlet area would ordinarily require in waters clearly within the State's jurisdiction.

Because Lower Cook Inlet is not the scene of an intensive Japanese or Soviet fishery or of a North American fishery for halibut, we cannot provide a great deal of relevant information. The same situation applies to Prince William Sound.

(SGD) HARRY L. RIETZE

Harry L. Rietze

Attachment

cc: Mr. Bradley

copy with attachment: Mr. Kirkness

-2-

RCHaab/cm

DX EC

RECEIVED AUG 31 1961

STATE OF ALASKA
OFFICE OF THE GOVERNOR
Juneau

C O P Y

August 7, 1961

Mr. Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries
United States Fish and Wildlife Service
Juneau, Alaska

Mr. C. L. Anderson, Commissioner
Alaska Department of Fish and Game
Juneau, Alaska

Gentlemen:

I am alarmed with the absence of immediate communication to proper authority of information regarding incidents beginning on July 3, 1961, wherein it is alleged that foreign vessels had violated State waters.

The Governor of Alaska was not aware of these reports or sightings until July 31, 1961. On that date a communication was received from the State Commissioner of Fish and Game requesting that the Governor communicate with the United States Secretary of State urging increased vigilance in the affected areas by the U. S. Navy and U. S. Coast Guard.

Upon receiving this communication from the State Commissioner of Fish and Game, the Governor of Alaska assumed that the Commander, Alaska Sea Frontier at Kodiak, and the Commander-in-Chief, Alaska at Elmendorf, had long since been advised of these incidents. I have since learned that my assumption in this regard was wrong. It is difficult for me to believe that the national security aspect of such encroachment would not instantly cause those persons who assert they witnessed such violations, to contact the Commander, Alaska Sea Frontier, Commander-in-Chief, Alaska, and the Governor of Alaska.

The almost unbelievable facts of the situation are these: Several sightings allegedly occured during the month of July, 1961, in which foreign vessels were observed violating State of Alaska waters. Representatives of the Federal Commercial Fisheries Division of the Fish and Wildlife Service observed such violations and for a period of weeks continued such observances and failed to alert the Commander, Alaska Sea Frontier, Commander-in-Chief, Alaska or the Governor of Alaska of the situation.

Letter, William A. Egan to Harry L. Rietze and C. L. Anderson,
August 7, 1961.

Mr. Harry L. Rietze
Mr. C. L. Anderson

August 7, 1961

As Governor of Alaska, I am embarrassed to find that such a neglect could occur, particularly in these days of national peril. I am initiating all possible steps to insure that such laxity will not again happen in the State of Alaska.

I am this date sending a directive to all State of Alaska Department heads, ordering them to inform State employees to immediately report unusual movements of foreign ships or persons that might have some bearing on national security or be in violation of State or Federal law, to the Commander-in-Chief, Alaska, Commander, Alaska Sea Frontier, and to the Governor of Alaska, prior to the time a report is made to the appropriate Department head. In this sequence, valuable time can be saved and a possible disaster more likely averted.

Copies of this letter will be mailed to the U. S. Secretary of State, the Secretary of Defense, the Director, Bureau of Commercial Fisheries, Washington, D. C., and all members of Alaska's Congressional Delegation. The Commander-in-Chief, Alaska, Commander, Alaska Sea Frontier, and the Commander, 17th Coast Guard District will also receive copies.

Sincerely,

/s/ William A. Egan

William A. Egan
Governor

DEPARTMENT OF STATE
WASHINGTON

COPY

August 15, 1961

Dear Governor Egan:

I refer to your telegram of August 1 regarding reports of whaling operations by Soviet and Japanese vessels within Alaska's territorial waters, and to our interim reply of August 3. The Department appreciates your bringing this matter to its attention.

We have held discussions on the subject with the Navy Department and the Coast Guard, as well as with the Fish and Wildlife Service, which, as you know, also has enforcement responsibilities in the Alaskan area. The Navy informs us that it is aware of the situation you describe, since air patrols of the Alaska Sea Frontier have on occasion observed Soviet and Japanese whaling vessels conducting operations within United States territorial waters. These patrols have not, however, seen any evidence of activities on the part of these foreign vessels which would constitute a threat to the security of the United States. The Commander, Alaska Sea Frontier, has been instructed to keep in close touch with your office and with the Commander, 17th Coast Guard District. The Navy also informs us that, as customary in the past, it stands ready to assist the Coast Guard upon the latter's request.

The Coast Guard is also aware of the circumstances, since in addition to reports from their own air patrols they also receive the reports of the Navy air patrols. (Apparently, all sightings of foreign vessels inside our territorial waters have been from the air, except for an observation from Amchitka Island and a recent observation by a research vessel of the Fisheries Research Institute.) Also, as you know, the Coast Guard carries out a surface patrol in the Bering Sea during the fishing season each year. Close liaison is maintained with the Commander, Alaska Sea Frontier, and with the Fish and Wildlife Service by the Commander, 17th Coast Guard District, who has also reported that his command is standing by and is ready to assist the Fish and Wildlife Service on request with aircraft and additional cutters as required. We are informed by the Fish and Wildlife Service that such a request will be made since the equipment of the latter agency is already being utilized in enforcement activities to the maximum extent possible.

The most

The Honorable
William A. Egan,
Governor of Alaska,
Juneau.

Letter, William C. Herrington to William A. Egan, August 15, 1961, and related correspondence.

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The most effective way of controlling such foreign activities would be, of course, to seize and arrest such vessels when found conducting operations within United States territorial waters and to impose penalties. There are two Federal statutes which have been cited as possibly providing authority for such a procedure in the Alaskan area and in the present case. One of these is the "Alien Fishing Restriction Act" (43 U.S.C. 243), which was applicable to Alaska as a Territory. In view of the realization of statehood by Alaska, the status of this Act is uncertain. The other is the "Whaling Convention Act of 1949" (16 U.S.C. 916), but the applicability of this Act to foreign nationals or vessels has also been questioned. We have asked the Department of the Interior and the Coast Guard for a formal opinion on these questions. Pending such clarification we are asking the Federal enforcement agencies to request an offending vessel to cease its operations and to escort it from territorial waters.

As you know, under our system of government, the control of fisheries within territorial waters has traditionally been left to the several States. We should appreciate being informed of the provisions of whatever laws of the State of Alaska might be applicable in the present case, since such legislation might have a definite bearing on Federal enforcement capabilities.

We feel sure that the situation will be considerably improved by the contemplated provision of additional Coast Guard aircraft and/or vessels. If we can be of any further assistance, please let us know.

Sincerely yours,

For the Secretary of State:

Wm. C. Herrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

cc: Lt. Cdr. Platts, Navy
Capt. Carlson, Coast Guard
Mr. Baker, BCF Juneau

Director, BCF, Washington, D. C. July 25, 1961

Regional Director, BCF, Juneau, Alaska

Foreign Fishing Vessel Sightings

The probability of Russian and Japanese whaling vessels operating in territorial waters, as outlined in our subject wire of July 14, is substantiated by a report received today from Refuge Manager Jones, Amchitka. Mr. Jones' memo is quoted:

"On July 3 the undersigned observed two whalers about 2 to 3 miles north of Chitka Point on Amchitka Island. Later they were joined by a third, larger vessel. One of the whalers had the number 21 on her bridge while the other had the number157 on her bridge. The third was not near enough to discern any numbers. These vessels were taking whales at the time we watched them. We could make out no flag to identify the nationality but we believe them to be Japanese. The whalers looked to be 150 to 175 feet long and quite powerful.

"A Japense fishing vessel of about 125 feet length ran aground and was abandoned on Amatignak I., the southernmost of the Aleutian Islands. This took place about three weeks ago."

Harry L. Rietze

cc: Coast Guard
Lindsley

HCScudder:ja

Fish & Wildlife Service

Commercial Fisheries

NIGHT LETTER

Juneau, Alaska July 21, 1961

OIC

USARAL COMMGEN WILDWOOD STATION ALASKA

PASS TO PRS TELETYPE STATION, SEATTLE, WASHINGTON

Unclass. Director, Bureau of Commercial Fisheries, Washington, D. C.

For your information. FRI vessel Renown Captain Birger Hanson reports Russian whale catcher less than 2 miles south of Unalga Island, Aleutians, July 16 with 2 whale kills alongside. 3rd whale lost in tiderip. Russian position given as 179°4'35" West 51°33'30" North. We are verifying position and method of fix and requesting excerpts fr. Renown log. Will transmit additional details as they are available.

Harry L. Rietze, Bureau of Commercial Fisheries

Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries, USFWS

cc: Roy Lindsley

JLRietze:ja

Fish & Wildlife Service
Commercial Fisheries

NIGHT LETTER

Juneau, Alaska 19 July 1961

OIC
USARAL COMMGEN WILDWOOD STATION ALASKA
Unclass. Mr. R. L. Burgner, Assistant Director, Fisheries Research Institute, University of Washington, Seattle, Washington. Urtel July 18 re Russian whale killer. If report can be verified, Russian vessel in violation of our Territorial waters. Furnish following info:
Name of U. S. sighting vessel and Captain; verify distance from Unalga Islan
How was distance from Island determined? Can position of U.S. and Russian vessels be excerpted from U. S. vessel's log?

Harry L. Rietze, Regional Director, Bureau of Commercial Fisheries

Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries, USFWS

HLRietze: jh

Fish & Wildlife Service
Commercial Fisheries

NIGHT LETTER

Juneau, Alaska 19 July 1961

OIC
USARAL COMMGEN WILDWOOD STATION ALASKA
Unclass. Mr. R. L. Burgner, Assistant Director, Fisheries Research Institute, University of Washington, Seattle, Washington. Urtel July 18 re Russian whale killer. If report can be verified, Russian vessel in violation of our Territorial waters. Furnish following info:
Name of U.S. sighting vessel and Captain; verify distance from Unalga Island.
How was distance from Island determined? Can position of U.S. and Russian vessels be excerpted from U.S. vessel's log?

Harry L. Rietze, Regional Director, Bureau of Commercial Fisheries

Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries, USFWS

HLRietze:jh

569-731 O - 75 - 26

August 1, 1961, Juneau, Alaska

HONORABLE DEAN RUSK
SECRETARY OF STATE
WASHINGTON, D. C.

RECEIVED AUG 4 1961

RUSSIAN AND JAPANESE FISHING VESSELS REPORTED CONDUCTING WHALING OPERATIONS WITHIN TERRITORIAL LIMITS ALASKA WATERS. STATE PATROL VESSELS UNABLE COPE WITH SITUATION. URGE STATE DEPARTMENT REQUEST NAVY AND COAST GUARD INCREASE VIGILANCE IMMEDIATELY WITH ADDITIONAL VESSELS DISPATCHED TO SCENE IF POSSIBLE.

WILLIAM A. EGAN
GOVERNOR

Office of the Governor

cc: Bartlett
Crusaing
Rivers

DX EF

Hydaburg, Alaska
January 27, 1940

U. S. Bureau of Fisheries

Gentlemen:

I would like to have some information on trawling rules and regulations pertaining to S. E. Alaska

I am interesting in scrap fish, crabs and shrimp. Also are there any regulations for trawling outside the three mile limits.

Are there any pamphlets out pertaining to the freezing and filleting of bottom fish?

Yours sincerely

Villian Tregoning

Orig. sent to Wash. Off.

Letter, William Tregoning to United States Bureau of Fisheries, January 27, 1940.

Seattle, Washington
February 7, 1940

Subject: Alaska fishery regulations

Mr. William Tregoning,
Hydaburg, Alaska

Dear Sir:

Receipt is acknowledged of your letter of January 27, 1940, requesting information on trawling rules and regulations pertaining to Southeastern Alaska.

We are enclosing herewith copy of the Alaska Fishery Regulations for 1940 and you will note regulations for salmon fishing in Southeastern Alaska begin on Page 29, and regulations for shrimp and crab fisheries at the bottom of Page 40 and at the top of Page 49. Under General Regulations on Page 49, paragraph 4 and 6 will furnish you information on the use of trawls.

Your letter is being forwarded to our Washington office for reply in regard to trawling outside the three-mile limit. We are also requesting that the Washington office furnish you with ~~any~~ any pamphlets they may may have on freezing and filleting of bottom fish, as we have no literature on these subjects in this office at the present time.

Yours very truly,

Chief Clerk

[illegible]
Enc.
cc Wash. Office

Letter, Chief Clerk, Seattle, Washington, to William Tregoning, February 7, 1940.

February 17, 1940

Subject: Alaska fishery regulations

Mr. William Tregoning,

Hydaburg, Alaska.

Dear Mr. Tregoning:

In further reply to your letter of January 27 addressed to the Bureau's Seattle Office requesting information concerning restrictions on trawling beyond the three-mile limit, you are advised that the only restriction now applicable beyond the territorial limits of Alaska is that which prohibits importation into the Territory of Alaska for purposes other than personal use, salmon from waters outside the jurisdiction of the United States taken during any closed period provided for by the Alaska fishery laws and regulations.

I am sending you herewith a number of mimeographed memoranda concerning the freezing and filleting of fish.

Very truly yours,

Chas. E. Jackson
Acting Commissioner

SHT:cwc

CC: Seattle office (blind)

copy given Juneau Office
" " Warden, S.P.W. Dist
[illegible]

Letter, Chas. E. Jackson, Acting Commission, to William Tregoning, February 17, 1940.

DX EI

CLASS OF SERVICE
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WESTERN UNION

W. P. MARSHALL, PRESIDENT

SYMBOLS
DL=Day Letter
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1955 FEB 1 AM 4 30

OA015

O.SEA054 LONG NL PD=SEATTLE WASH 1*

*DIRECTOR UNITED STATESG. FISH AND WILDLIFE SERVICE=

WASHDC=

GENTLEMEN SEATTLE WILDLIFE SERVICE REFERS MATTER OF ELECTRICAL FISHING TO WASHINGTON WE WISH TO KNOW IS IT POSSIBLE TO CARRY OUT EXPERIMENTAL ELECTRICAL SALMON FISHING IN ALASKA IN UNPROHIBITED AREAS WHERE THERE IS LITTLE OR NO COMMERCIAL FISHING LIKE TO BE ABLE TO EXPERIMENTALLY COMMERCIALLY FISH IN THE ALEUTIAN CHAIN AND IN UNPROHIBITED AREAS OTHER THAN THOSE DEFINED AS TERRITORIAL WATERS OUTSIDE OF 3 MILE LIMIT. PARTIAL ANSWER TO URGENT PROBLEM NEEDED SOON AS POSSIBLE FOR REFERANCE TO ACCENTUATE FOREIGN OR DOMESTIC CONTRACTORS. THIS SYSTEM MAY MAKE IT POSSIBLE FOR AMERICAN FISHERIES TO BE WORLD COMPETITIVE. ANSWER IS URGENTLY REQUESTED=

LEKTRONET INC 2601 WEST 54 SEATTLE 7 WASH=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

Telegrams between Lektronet, Inc and J. L. Farley, February 1, February 2, February 8, February 11, 1955.

Erickson
Baker

Fish and Wildlife Service
February 1, 1955

Lektronet Inc.
2601 West 54th Street
Seattle 7, Washington

Retal gear could be fished outside 3 mile limit and salmon brought into Alaska during open season in Alaskan waters. Cannot advise you if fishing in territorial waters including Aleutians permissible without at least brief description of gear and manner of operation.

John L. Farley, Director
Fish and Wildlife Service

By:
Ralph C. Baker

DWErickson:cpw

RECORDS & COMM
FEB 1 5 58 PM '55
FISH AND WILDLIFE SERVICE

CLASS OF SERVICE

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WESTERN UNION

W. P. MARSHALL, PRESIDENT

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VLT = Int'l Victory Ltr.

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

WP061 PD=SEATTLE WASH 1 114PMP=

JOHN L FARLEY, DIRECTOR=

FISH AND WILD LIFE SERVICE=

AF

RE TELEGRAM OPERATION SIMILAR TO COBB OPERATION USING OUR GEAR SEE COMMERCIAL FISHERIES REVIEW FOR FEBRUARY 54=

LEKTRONET INC=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

SE UAF 23 I-FUS 42

UASHINGTON 2-1-55 150P

LEKTRONET INC.

2601 UEST 54TH ST SE

RETEL GEAR COULD BE FISHED OUTSIDE 3 MILE LIMIT AND SALMON BROUGHT INTO ALASKA DURING OPEN SEASON IN ALASKAN UATER. CANNOT ADVISE YOU IF FISHING IN TERRITORIAL UATERS INCLUDING ALEUTIANS PERMISSIBLE UITHOUT AT LEAST BRIEF DESCRIPTION OF GEAR AND MANNER OF OPERATION.

JOHN L FARLEY, DIR FUS

EF 250P

RECEIVED
FEB 2 1955

OSE UAF 21 I-FUS 44

WASHINGTON 2-2-55 308P

LEKTRONET INC

2601 WEST 54TH ST SE

RETEL GEAR AS USED BY COBB FOR HERRING NOT LEGAL FOR SALMON IN TERRITORIAL WATERS OF ALASKA. SEE SECTION 102.15 OF REGULATIONS. ALSO SEE PART 106 FOR ALEUTIAN ISLANDS AREA SEASONS IF SALMON ARE TO BE BROUGHT IN FROM OUTSIDE THE 3 MILE LIMIT.

J L FARLEY DIR FUS BY RALPH C BAKER FUS

102.15 106 3

OHS 313P

BEST COPY AVAILABLE

Aleutians

Erickson
Baker

Fish and Wildlife Service
FEBRUARY 2, 1955

LEKTRONET INC.
2601 WEST 54TH STREET
SEATTLE 7, WASHINGTON

RETEL GEAR AS USED BY COBB FOR HERRING NOT LEGAL FOR SALMON IN TERRITORIAL WATERS OF ALASKA. SEE SECTION 102.15 OF REGULATIONS. ALSO SEE PART 106 FOR ALEUTIAN ISLANDS AREA SEASONS IF SALMON ARE TO BE BROUGHT IN FROM OUTSIDE THE 3 MILE LIMIT.

JOHN L. FARLEY, DIRECTOR
FISH AND WILDLIFE SERVICE

BY: Ralph C. Baker
RALPH C. BAKER

DWErickson:opw

RECORDS & COMM
FEB 5 5 22 PM '55
FISH AND WILDLIFE SERVICE

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

SYMBOLS
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OA565

AF

O.SEA964 NL PD=SEATTLE WASH 7= 1955 FEB 8 AM 3 06

DIRECTOR JOHN L FARLEY=

FISH AND WILD LIFE SERVICE WASHDC=

RETEL REQUEST CLARIFICATION CONCURRENCE OUR GEAR LEGAL FOR COMMERCIAL FISHING THREE MILES OFF SHORE GENERALLY IN ALASKA INCLUDING OFF SHORE EGEGIK UGASHIK ALEUTIAN ISLANDS UNIMAK ISLAND ALEUTIAN PENINSULA KODIAK ISLAND COOKE INLET SOUTHEASTERN ETC=

LEKTRONET INC=..

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

TELETYPE

Xerox copy

Summers

FISH AND WILDLIFE SERVICE
FEBRUARY 11, 1955

LEKTRONET INC.
2601 WEST 54TH STREET
SEATTLE 7, WASHINGTON

RETEL EIGHTH CURRENT ALASKA COMMERCIAL FISHERY REGULATIONS APPLY ONLY TO TERRITORIAL WATERS AS DESCRIBED IN REGULATIONS. UNRESTRICTED FISHING BY ANY FORM OF GEAR IN AREAS OUTSIDE TERRITORIAL WATERS IF SUCCESSFUL WOULD NULLIFY EFFECTIVENESS PRESENT CONSERVATION MEASURES AND JEOPARDIZE SALMON RUNS. SUCH ACTIVITY UNDOUBTEDLY WOULD LEAD TO EARLY CONTROL MEASURES.

(SGD) JOHN L. FARLEY
JOHN L FARLEY, DIRECTOR
FISH AND WILDLIFE SERVICE

SEThompson:cpw:jm

RECORDS & COMM.
FEB 12 9 31 AM '55
FISH AND WILDLIFE SERVICE

OSE WAF 2 I-FUS 50

WASHINGTON 2-15-55 954A

LEKTRONET INC

2601 WEST 54TH ST SE

RETEL EIGHTH CURRENT ALASKA COMMERCIAL FISHERY REGULATIONS APPLY ONLY TO TERRITORIAL WATERS AS DESCRIBED IN REGULATIONS. UNRESTRICTED FISHING BY NEW FORM OF GEAR IN AREAS OUTSIDE TERRITORIAL WATERS IF SUCCESSFUL WOULD NULLIFY EFFECTINVENESS PRESENT CONSERVATION MEASURES AND JEOPORADIZE SALMON RUNS. SUCH ACTIVITY UNDOUBTEDLY WOULD LEAD TO EARLY CONTROL MEASURES.

J L FARLEY DIR FUS

OHS 1021A

DX EJ

JAN 29

3121 [illegible] Ave.,
[illegible],
January 26th, [illegible]

U.S. Fish & Wildlife,
Juneau, Alaska.

Gentlemen: Attn: Mr. Scudder.

I am a fisherman and have been for the past twenty years. I have gill netted in Bristol Bay, Copper River Delta, Bering River and seined in Prince William Sound, Southeastern Alaska and Puget Sound.

This morning I called on the department and read the 1948 regulations. I notice that insofar as the Copper River Delta and Bering River is concerned the new regulations reduces the gear by fifty fathoms and calls for a twenty four hour closed period from 6 A.M. Wednesday to 3 A.M. Thursday. For the boats that cannot fish offshore this may work a severe hardship as the fish run may pass up on this closed day. Of course, all of the fishermen on the Flats realize the run must be built up, but they also feel once the fish get in the sloughs they should be left alone. For that reason a number of fishermen have built larger boats and they fish offshore. Myself, I fish offshore most of the time weather permitting and consider it legitimate to fish beyond the three mile limit any time.

What I would like to know is this. If I fish beyond the three mile limit on a Wednesday during the Copper River season, would I be permitted to bring my fish into the Copper River area during the closed period, for delivery to the cannery tenders.

An early reply will be appreciated.

Yours very truly,

Dennis Hanson Jr.

Letter, Tonnes Hanson, Jr. to U. S. Fish and Wildlife Service, January 26, 1948.

[illegible]

[illegible]

Mr. Tonnes Hanson, Jr.
[illegible]
Seattle, Washington

Dear Mr. Hanson:

Reference is made to your letter of January 26 [illegible] the regular season is to be closed [illegible] the Pacific Coast [illegible] to give us [illegible] some question, will be very much [illegible] your wish as a [illegible] buyer on the Oyster River area.

Section 1 of the Act of June 10, 1924 provides:

"It shall be unlawful to transport or have [illegible] the boundaries of Alaska, [illegible] any fish which may [illegible] any fish or shellfish, taken [illegible] outside the jurisdiction of the United States during any closed season [illegible] provided for by the laws of the territory [illegible] thereunder."

In view of the foregoing and especially since part of your operations, other than the transportation of the Act of June 10, 1924, it is obvious that it is [illegible] for you to fish beyond the Seattle limit [illegible] and attempt to sell the fish where during any closed period.

Very truly yours,

H. C. Scudder
Asst. Fishing Supervisor

Letter, H. C. Scudder to Tonnes Hanson, Jr., January 30, 1948.

FN 101

DX EK

FISHERIES
AUG 7 - 1924
ALASKA

Seattle August 1, 1924.

O'Malley,

Bureau Fisheries,
Juneau, Alaska.

Understand some of mild cure operators on West coast Prince of Wales Island seriously considering taking outfit outside three mile limit and putting up pack during closed season and bring pack to states without touching any points Alaska. Suggest have warships watch this procedure and see if operators come inside Bureau's jurisdiction on way to states.

Russell

Official business

Field Superintendent

Telegram, Russell to O'Malley, August 1, 1924.

- copy -

Juneau, Ala., Aug. 1, 1924.

Russell

1217 L C Smith Bldg Seattle, Wn.

There is nothing in present law that prohibits fishing in open areas and canning catch in canneries within closed areas, stop, if you get any further information regarding mild curing outside three mile limit wire me at Juneau.

O'Malley,

1 48 p

Telegram, O'Malley to Russell, August 1, 1924.

Seattle, Washington. June 30, 1929.

Hynes,

Bureau of Fisheries,

Ketchikan, Alaska.

Reply your letter wire twenty nine relative fish taken outside three mile limit Bureau has no control over fishing on high seas but can seize fish when landed if absolute proof fish caught during closed season/stop/See Department Circular two five one Section one last paragraph. Commissioner departed ketchikan noon today aboard Brant.

Russell

Offical business,

Telegram, Russell to Hynes, June 30, 1929.

DX EL

February 25, 1952

Koppen, FWS, Cordova, Alaska

Fishery Management Supervisor, FWS, Juneau, Alaska

Interpretation of Section 111.20, Prince William Sound, and 112.15, Copper River Area.

In answer to your memorandum of February 21 on the above subject, I am returning the chart which you had made up, and have indicated roughly the additional areas which were meant to be closed by the above-mentioned Sections. You are correct in your interpretation of the closed season north of 60 deg. 22' and east of 146 deg. 40'. In addition, all other waters are closed from July 16 to August 15. This closure will include all the waters within three miles of the outside shore line. That is, all waters regularly recognized as being under our jurisdiction. It has been the accepted policy that we do not have jurisdiction three miles off the continental shore line. Hence, beyond the three-mile limit there will be no closed season. It is my understanding that crab pots cannot be successfully used more than three miles offshore because of excessive sanding and adverse water conditions.

These two Sections, then, will mean a virtual closure of the crab fishing in that month - July 16 to August 15, Since no fishing could be done except in the area more than three miles offshore. We doubt that enough crabs can be taken outside this three-mile limit to maintain a crab operation.

R. F. SHUMAN

Enclosure

Memorandum, R. F. Shuman to Fishery Management Supervisor, Fish and Wildlife Service, February 25, 1952.

DX EM

- COPY -

2103-21

January 7, 1916.

IN RE limiting fishing in Bering Sea.

The opinion of this office is requested as to whether or not the Department is authorized by section 6 of the Alaska Fisheries Act of June 26, 1906 (34 Stat. 478) to issue a regulation limiting the size of the mesh of gill nets used in the red salmon fisheries of Bering Sea to a minimum of 5½ inches, stretched mesh.

Section 6 provides as follows:

"The Secretary of Commerce may, in his discretion, set aside any streams or lakes as reserves for spawning grounds, in which fishing may be limited or entirely prohibited; and when, in his judgment, the results of fishing operations in any stream, or off the mouth thereof, indicate that the number of salmon taken is larger than the natural production of salmon in such stream, he is authorized to establish close seasons or to limit or prohibit fishing entirely for one year or more within such stream or within five hundred yards of the mouth thereof, so as to permit salmon to increase: * * **

In an opinion of this office, dated January 27, 1914, it was held that the provisions of this section extended to any of the Alaskan waters over which the United States has jurisdiction, and in which fish of any kind or species are accustomed to spawn, and in an opinion dated February 4, 1914, wherein was considered the right of the Department under section 6 to limit fishing in parts of the sea several miles in extent, it was held (1) that as these waters were not the accustomed spawning places of salmon or other food fishes, they could not be set aside as spawning preserves, and (2) as they were not salmon streams the Secretary had no authority to close them under the power

Letter containing opinion, A. L. Thurman, Solicitor, to the Secretary of Commerce, January 7, 1916; referred to the Bureau of Fisheries, January 8, 1916.

granted to him to close such streams, and (3) that the only power that the Secretary had over such waters was that of prohibiting fishing, under certain conditions, within 500 yards from the mouth of salmon streams. The ruling laid down in this latter opinion is no applicable to the sea itself as to "arms of the sea," and if the Secretary has no authority under section 6 to limit or prohibit fishing in "arms of the sea," he likewise, for the same reason, is without authority to prohibit or limit fishing in the sea itself.

With regard to the suggestion of the Bureau that possibly section 11 of the Fisheries Act empowers the Department to limit fishing in Bering Sea, it is my opinion that no such power is granted by this section. The section provides:

> "The catching or killing, except with rod, spear, or gaff, of any fish of any kind or species whatsoever in any of the waters of Alaska over which the United States has jurisdiction, shall be subject to the provisions of this Act, and the Secretary of Commerce is hereby authorized to make and establish such rules and regulations not inconsistent with law as may be necessary to carry into effect the provisions of this Act."

This section is a general provision enacted, apparently, for the purpose of including within the provisions of the Fisheries Act "fish of any kind or species whatsoever." It in no way enlarges the scope of the Department's authority over salmon fisheries, but merely grants to the Department the same powers with regard to other fish as the provisions of the act specifically grant to it with regard to salmon.

In view of the foregoing, therefore, it is my opinion that as salmon do not spawn in Bering Sea, section 6 does not empower the Secretary to prohibit or limit fishing therein, and consequently the Department is without power to limit the size of the mesh of gill nets used in the red salmon fisheries in such sea.

Respectfully submitted,

A. L. Thurman,

Solicitor.

The Secretary of Commerce.

R-Fg
Incl.

Referred to the Bureau of Fisheries,

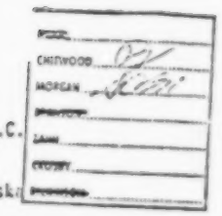
Jan. 8, 1916. E. F. Sweet

Assistant Secretary.

BEST COPY AVAILABLE

600-05

DX ES



1970

Acting Director, BCF, Washington, D.C. November 20, 1969

Regional Director, BCF, Juneau, Alaska

Lack of United States laws or regulations implementing international fisheries agreements

This is in follow-up of my telephone conversation with Bill Terry today regarding the subject.

In late 1964 and early 1965, the United States negotiated agreements concerning king crab fishing in the eastern Bering Sea with Japan and the Soviet Union respectively. These agreements provided that nationals of the respective countries would abide by certain conservation measures including restrictions on types of gear used, minimum size of crabs taken, and retention only of male crabs. The agreements also established a zone north of the Alaska Peninsula in which only pots can be fished. Thus far, regulations of the Alaska Department of Fish and Game have been solely depended upon to implement the provisions of these agreements upon U.S. nationals. The present strike by king crab fishermen here in Alaska has emphasized that continued dependence on State regulations may be inadvisable. A number of non-Alaskan crab fishing boats have apparently signed separate agreements and intend to fish crab while the Alaskan-operated vessels remain on strike. There have been some pressures upon the Governor's office to impose a statewide closure on crab fishing until the Alaskan fishermen can reach settlement. Should this occur, it is possible the non-Alaskan boats and floating processors could fish anyway as long as they operate beyond waters of State jurisdiction, that is beyond the 3-mile limit. Conceivably in such a circumstance, these non-Alaskan boats could fish in complete violation of all provisions of the king crab agreements and would not be subject to regulation by either State or Federal authorities. The same situation, of course, prevails regardless of the current strike assuming the non-Alaskan boat does not enter waters of State jurisdiction which, of course, subjects him to compliance with Alaska regulations.

A somewhat analagous situation exists in the Kodiak Island region. In late 1964 the United States reached an agreement with the Soviet Union under which six areas adjacent to Kodiak Island are closed to fishing with mobile gear during certain periods of the year. This closure, except for small shrimp trawlers and scallopers, applies to nationals of both countries. Heretofore, this has presented no problems since there were

Memorandum, Harry L. Rietze to Acting Director, Bureau of Commercial Fisheries, Washington, D. C., November 20, 1969.

no United States ships with high-seas trawling capabilities in the Alaskan area. With the appearance of the SEAFREEZE PACIFIC in this area, it is possible she could trawl within these zones during the closed period and would be subject to no U.S. laws implementing the gear areas agreement. It could be extremely embarrassing to the United States if the Soviets found the SEAFREEZE PACIFIC trawling in these zones during the closed period and learned that in 5 years the United States has taken no action to implement the agreement.

We have at various times in the past mentioned to Central Office personnel this lack of implementing United States laws. The present situation, however, leads us to believe that additional consideration should be given to the enactment of United States laws implementing these agreements.

(SGD) HARRY L. RIETZE

Harry L. Rietze

cc:
Kirkness
Nakatsu
Branson

RCNaab/cm

DX EX

Office Memorandum • UNITED STATES GOVERNMENT

TO : Administrator, Alaska Commercial Fisheries
Juneau

DATE: November 23, 1955

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Regulation of salmon fishing on high seas.

The matter of regulating salmon fishing on the high seas adjacent to Alaskan waters in accordance with the authority contained in the Act of August 12, 1954, has been discussed informally with members of the Solicitor's staff.

As a result of these discussions, we believe the objective of prohibiting salmon fishing on the high seas, except by hook and line, can be accomplished by: (1) promulgation of a general regulation describing the waters in which existing regulations are applicable; and (2) promulgation of a regulation prohibiting all salmon fishing by U. S. Nationals in the convention waters off the Alaska coast east of 175 degrees west longitude.

The waters in which existing regulations apply could be described as follows:

> "All waters for a distance 3 miles seaward (1) from the coast and lines extending from headland to headland across . . . all bays, inlets, straits, passes, sounds, and entrances, and (2) from the shores of any island or group of islands, including the islands of the Alexander Archipelago and the waters between such groups of islands and the mainland."

This description, we believe, would include the waters commonly fished in recent years, particularly those in Bristol Bay, that might otherwise be considered high seas. A careful check should be made to be sure other waters fished under existing regulations are not omitted, and, in this connection, we are wondering whether this completely covers the purse seine fishery west of False Pass, and off the west coast of Prince of Wales Island.

The act implementing the North Pacific Fisheries treaty will be cited as authority for prohibiting fishing, except hook and line, by U. S. Nationals on the high seas off the Alaskan coast east of 175 degrees west longitude. The prohibition, we believe, must be limited only to the area within which the Japanese have agreed to abstain from fishing, and only to waters off the Alaskan coast, unless Canada imposes a similar restriction on its nationals. In the event Canada does impose a prohibition on salmon fishing on the high seas not only off British Columbia, but throughout convention waters, as suggested by the U. S. Section of the Commission, we may wish to broaden the regulation to restrain U. S. Nationals in the same manner.

Memorandum, Seton Thompson, Chief, Branch of Alaska Fisheries,
to Administrator, Alaska Commercial Fisheries,
March 23, 1955

Upon receipt of your views on this subject, the matter will be taken up further with the Chairman of the U. S. Section of the Commission, as indicated in the Department's letter of October 10, copy of which was sent to you.

Seton H. Thompson

DX FF

D Ex. 9
8/20/71

Office Memorandum · UNITED STATES GOVERNMENT

TO : Administrator, Alaska Commercial Fisheries
U.S. F.W.S Juneau, Alaska

DATE: March 29, 1957

50/.01

FROM : Assistant Administrator for Staff Coordination
Alaska Commercial Fisheries U.S. FWS Juneau, Alaska

SUBJECT: Report on Attendance at International Conference February 27 and 28, 1957 - Seattle, Washington.

On February 26, I made a trip to Seattle to attend this International Conference, to hold meetings with the operators concerning the Bear River fisheries and the Cook Inlet fisheries, and to confer with Bob Simpson concerning the compilation of statistics and the move of the statistical unit to Juneau. This memo is a report on the International Conference on February 27 and 28.

The meeting was held in Seattle at the laboratory of the Washington State Fisheries Department. I attended as a member of the United States delegation to discuss the control of offshore fishing, primarily salmon net fishing, with representatives of the states of California, Oregon and Washington and the Canadian Government. Those present and subjects under discussion are set forth in the attachments to this memo, some of which are confidential.

At the meeting, the three states and Canada presented charts showing a line beyond which the offshore net fishery would not be allowed to develop. This line, as presented by the states and Canada, had no reference to the three-mile limit, but in many instances almost coincided with the surf lines along the coast of these countries. This indicated that the states and Canada intended to prohibit salmon net fishing in any instances, even in their territorial waters. The line drawn by the Canadians hugged the Vancouver Island shoreline quite closely but was somewhat loosely drawn along the eastern shore of Hecate Streit up to the international boundary line between Canada and Alaska. They had also drawn a fairly tight line around Queen Charlotte Island. In the discussions there was some controversy between the Canadians and the people of Washington State concerning the line drawn across the mouth of the Strait of Juan de Fuca. The Canadians proposed a line from Tatoosh Island to Bonilla Point which line, the Americans thought, would give the Canadians a somewhat greater advantage in fishing the runs headed for the inside waters to the Straits. The people from Washington State wanted the line drawn across the Straits at a position farther inshore. This was finally compromised by accepting the Canadian proposal of a line from Tatoosh Island to Bonilla Point for a period of two years with the understanding that Canada and the State of Washington would conduct further research on the migration and movements of the salmon in this area and, should any inequities appear to arise from the position of the line during this period, Mr. Whitmore of the Canadian Department of Fisheries and the Director of Fisheries of the Washington State

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Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 29 of that deposition:

Memorandum, John T. Gharrett, Assistant Administrator for Staff Coordination, Alaska Commercial Fisheries, to Administrator, Alaska Commercial Fisheries, U.S. FWS, Juneau, Alaska
March 29, 1957.

Department of Fisheries would get together to try to adjust the difficulties.

During the discussions, the Canadians evinced particular interest in the laws governing Alaska fisheries in reference to offshore net fishing. They were fully aware of our current regulations prohibiting offshore net fishing beyond the three-mile limit, but were interested in knowing from what base line we determined this three-mile limit. They requested that we draw a line on a chart showing the proposed base line from which the three-mile limit would be measured. It seemed obvious to Mr. Terry and myself that their primary interest was in knowing how we would treat Forrester Island, which is located some distance offshore. Would it be included in the base line as drawn from headlands to islands to headlands and thus permit an offshore purse seine fishery to develop in that area on fish heading through Dixon Entrance and subsequently to Canadian rivers? Also, it appeared that they were interested in knowing how wide a gap between islands and headlands we were prepared to bridge in drawing the base line for determining the three-mile distance offshore. To satisfy them, Mr. Terry and I, on a very small scale chart, drew a rough line from the boundary line at Dixon Entrance northward along the coast as far as Icy Strait. We explained that this was a very rough line subject to approval and redesignation at a later date. We did indicate that Forrester Island would not be included in the base line but would have a separate line drawn around it. The Canadians accepted this with the proviso that, as soon as practicable to us, we furnish them with a chart showing the base line for all of Alaska from which we would determine the three-mile limit as mentioned in our regulation prohibiting offshore salmon net fishing. This we agreed to do.

Other discussions were held concerning the offshore troll fishery, otter trawl fishery and black cod fishery, and the Canadians in general agreed with many of the proposals for regulation which had been developed formerly by the Pacific Marine Fisheries Commission for the coordinated management of these various fisheries.

The conference was concluded on the evening of February 28 and the results are fairly well summarized in the attached newspaper clipping.

John T. Gharrett

JOHN T. GHARRETT

attachments

DX FF A 801-01

Director, Bureau of Commercial Fisheries, FWS, Washington, D.C. June 11, 1957

Acting Administrator, Alaska Commercial Fisheries, FWS, Juneau, Alaska

Offshore fishing - Alaska

Reference is made to Mr. Suomela's subject memo of March 21, 1957. Airmailed under separate cover are overlays of specific navigational charts which delineate our concept of the correct base line from which "waters of Alaska" should be determined.

In studying these proposed base lines the following principles should be considered:

(1) They do not represent the outer limits of territorial waters but are only the base from which outer limits are determined.

(2) We have attempted both to protect existing American offshore net fisheries and to prevent the development of new such fisheries.

(3) Base lines have been drawn to apply primarily to American fishermen and represent our thinking as to how the offshore regulation should complement the management of our Alaskan territorial fisheries.

(4) Although relatively large areas of open water are sometimes encompassed, management of our fishermen can be accomplished under established procedures.

(5) In drawing base lines, interpretation of international waters was not a primary concern.

The overlay process has a tendency to shrink the paper to a minor extent. Therefore, the overlays may not exactly fit the points indicated on corresponding charts as discussed below:

(1) U.S.C.&G.S. 8202 (Dixon Entrance to Cape St. Elias) (January 5, 1949). There may be some question about using the Alaska-Canadian boundary as a southern limit but we feel that it is logical.

(2) U.S.C.&G.S. 8502 (Cape St. Elias to Shumagin Islands) (October 23, 1950). You will note two alternate lines between Cape St. Elias and Hinchinbrook Island. The solid line was our first

Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971 described at page 29 of that deposition:

Memorandum, Howard Baltzo, Acting Administrator, Alaska Commercial Fisheries, to Director, Bureau of Commercial Fisheries, Washington, D. C., June 11, 1957.

estimate but, upon inquiry in the field, it developed that in some years of suitable weather the Copper River gillnetters fish the open ocean beyond the sand bars for as far as ten miles. In view of our adopted principle (2) above, we recommend that the base line follow the dotted one on the overlay.

We have drawn the base line from Chugach Island to Point Banks, and then have included all waters surrounding Kodiak Island and waters of Shelikof Strait. Fishing by our nationals within Cook Inlet and Shelikof Strait can be controlled through regular management procedures.

There is an existing Canadian halibut fishery in Kamishak Bay and various bays along the north side of Shelikof Strait. Our proposal is concerned with management of our salmon net fishery, but the Canadian halibut fishery should probably also be given consideration.

(3) U.S.C.&G.S. 8802 (Alaska Peninsula and Aleutian Islands to Seguam Pass) (March 9, 1953). The purse seine fishery in Unimak Bight on the south side of Unimak Island would be contained within a distance of three miles from the base line as we have drawn it. The purse seine fishery off Bear River on the north side of the Peninsula near Port Moller would also be so contained. You will note a double line across Bristol Bay, roughly between Cape Menshikof and Cape Newenham. The dotted line is the present boundary of our Bristol Bay management district. Since our base line represents the boundary from which the outer limit of fishing is measured, the solid base line is set three miles back of the Bristol Bay management line. Only gillnetting is permitted in Bristol Bay and fishing is restricted to specified local areas.

(4) U.S.C.&G.S. 9102 (Amukta Island to Attu Island) (November 19, 1951). This carries our proposed base line only out to 175 degrees west longitude.

(5) U.S.C.&G.S. 9302 (Bering Sea) (September 14, 1953). North of Bristol Bay, limited salmon gillnet fisheries exist within the Kuskokwim and Yukon Rivers. Any other salmon fisheries in the area are negligible and knowledge of salmon runs in the more northern rivers is relatively slight. The base line in this area, as we have drawn it, is designed primarily to prevent any future development of offshore salmon net fisheries.

(6) U.S.C.&G.S. 9400 (Arctic Coast of Alaska) (August 11, 1952). Any existing salmon commercial fisheries are negligible and knowledge as to the potential of this area is limited. We have drawn the base line

across the south of Kotzebue Sound recognizing there may some day develop a salmon or other commercial fishery within the Sound. The rest of the bare around to the Canadian boundary has been drawn to pretty much follow the surf line.

We have not consulted the fishing industry in any respect concerning our proposed line; it incorporates only the thinking of members of our staff. Should you deem it proper, it might be well to discuss the matter at our public fishery hearings this fall to solicit further advice and to publicize what is being done.

C. RICHARD BALTZO

cc: Charrett
Scudder
Lindsley

JTCharrett/CRBaltzo:jh

DX FF 1

Office Memorandum • UNITED STATES GOVERNMENT

TO : Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska

DATE: October 30, 1958

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Alaska North Pacific offshore fishing boundary

Attached for your information and comment is a copy of a self-explanatory letter from the Canadian Under Secretary of State for External Affairs to the American Minister at Ottawa.

You will note that the Canadian Government is very much interested in discussing early in 1959 the present location of the line beyond which salmon net fishing is prohibited in the North Pacific Ocean off the coast of Alaska. As you know, the United States Government, through this Department, was the first to prohibit salmon net fishing in the North Pacific Ocean. The Department's regulation placed the prohibition against such net fishing at three miles seaward from lines extending from headland to headland along Alaska's coast. Subsequently, a regulation having a similar purpose was adopted by Canada but with a significant difference in approach in that the Canadians prohibited salmon net fishing beyond base lines extending from headland to headland. It is also significant that the Canadians established lines from headland to headland around the Queen Charlotte Island group, thus leaving Hecate Strait as waters of the high seas and closed to salmon net fishing. This action suggests the possibility that we should give similar treatment to the waters between the Alaska Peninsula and the Kodiak Island group. It is understood that the States of Washington, Oregon and California also have prohibited salmon net fishing in Pacific Ocean waters seaward from the line of high tide along the open coast lines of those states.

It is requested that you review the effect on the salmon fisheries in Alaska which would result if an offshore fishing boundary were established similar to that in effect in British Columbia. Since some fish traps to the westward are installed and maintained directly on a headland, it seems clear that a prohibition against the taking of salmon, except by trolling, in waters beyond a line extending from headland to headland, would have the effect of eliminating such traps. Particular attention

---

Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 30 of that deposition:

Memorandum, John I. Hodges, Chief, Branch of Alaska Fisheries, to Regional Director, Bureau of Commercial Fisheries, October 30, 1958.

should be given to the effect of a change in the location of the Alaska offshore fishing boundary in Southeastern Alaska, since we believe that the Canadians' desire to discuss this matter stems from its concern over the catches of salmon taken by net fishing in the Cape Adulgton area.

John I. Hodges

Attachment

DX FF 3

Director, BCF, FWS, Washington, D. C. November 3, 1958
Attn.: Chief, Branch of Alaska Fisheries

Regional Director, BCF, FWS, Juneau, Alaska

Alaska North Pacific offshore fishing boundary

Re Mr. Hodges' subject memo of October 30, I have several questions:

1. I was not aware that the Canadian location of its base line stipulated "from headland to headland." May we have a copy of the Canadian regulation?

2. Were the charts mentioned in the letter from the Canadian Under Secretary of State for External Affairs the same as recommended and submitted to Washington by this office, or were there changes made before Washington submitted them to Canada?

3. May we have copies of any correspondence between governments in respect to the above?

4. The charts we submitted to Washington on June 11, 1957, showed a base line from which we proposed the 3-mile limit in Alaska be measured. With the possible exception of our treatment of Kodiak Island, would the line we recommended be considered similar to that line proposed by the Canadians for their present base line?

The review requested by Mr. Hodges' memo will require considerable analysis and will be facilitated by delineation in accordance with the above requested information.

JOHN T. GHARRETT

JTGharrett:jh

Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 30 of that deposition:

Memorandum, John T. Gharrett, Regional Director, Bureau of Commercial Fisheries, to Director, Bureau of Commercial Fisheries, Attn: Chief, Branch of Alaska Fisheries, November 3, 1958.

FF-3

DX FF 4

821-01 F.F

Office Memorandum • UNITED STATES GOVERNMENT

TO : Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska

DATE: November 12, 1958

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Alaska North Pacific Offshore Fishing Boundary

Re your memorandum of November 3, we shall attempt to bring you up-to-date on the above subject and answer the questions you proposed. The numbers used here refer to the paragraph numbers in your memorandum in which you requested specific information.

(1) Attached are three copies of the British Columbia Fisheries Act spelling out in detail the lines they have drawn. Also attached is a Verifax copy of the lines as they appeared in the Western Fisheries journal for March 1957. We regret that copies of this Act were not previously forwarded to you, but it was assumed that you had a working arrangement with British Columbia whereby any such changes in regulations were automatically exchanged at the field level.

(2) The answer to this question is affirmative. The charts and overlays were forwarded to the Canadian Government as submitted by you.

(3) The attached Verifax copy of a letter from Mr. Whitmore dated August 14, 1957, is the only pertinent piece of correspondence which we have located here. We will search further, however, and attempt to obtain copies of correspondence between governments for you.

(4) In our estimation the charts you submitted appear to be comparable, as to base lines, with the Canadian regulations with the exception as you have noted, of your treatment of the Kodiak Island group. We do not, however, suggest that any action be taken concerning the Kodiak Island group prior to the forthcoming meeting with the Canadians.

We do not have copies of the Washington and California regulations with respect to offshore net fishing and you may wish to obtain them directly from those states. Copies of the pertinent sections in the Oregon Code are attached.

Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 30 of that deposition:

Memorandum, John I. Hodges, Chief, Branch of Alaska Fisheries, to Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska, November 12, 1958.

FF-4

The fact that the Alaska regulations alone permit net fishing out to the three-mile limit may make our position difficult to maintain in the forthcoming meetings and for that reason we wish to add as much defense material to our position as possible.

I trust that this answers your questions adequately, and will be of help in preparing your review.

John I. Hodges

Attachments

DX FJ 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

18 July 1957

Harley Adams
Coho, Alaska

Dear Mr. Adams:

This is to advise you that you are directed to appear at the Fish and Wildlife Service office in Kenai, Alaska on Monday, July 22, 1957 at 2:00 p.m.

You were previously requested by Charles Wilson to appear there during the fishing closure beginning July 16, 1957 to answer to a charge of violating section 109.12, of the Alaska Commercial Fishery Regulations. Since you apparently did not appear - or left no word of your reason for not making your appearance - this letter is a final warning. Failure to appear, or reply to this letter will result in a warrant for your arrest, served by the U.S. Marshall.

Very truly yours,

CFC:bb

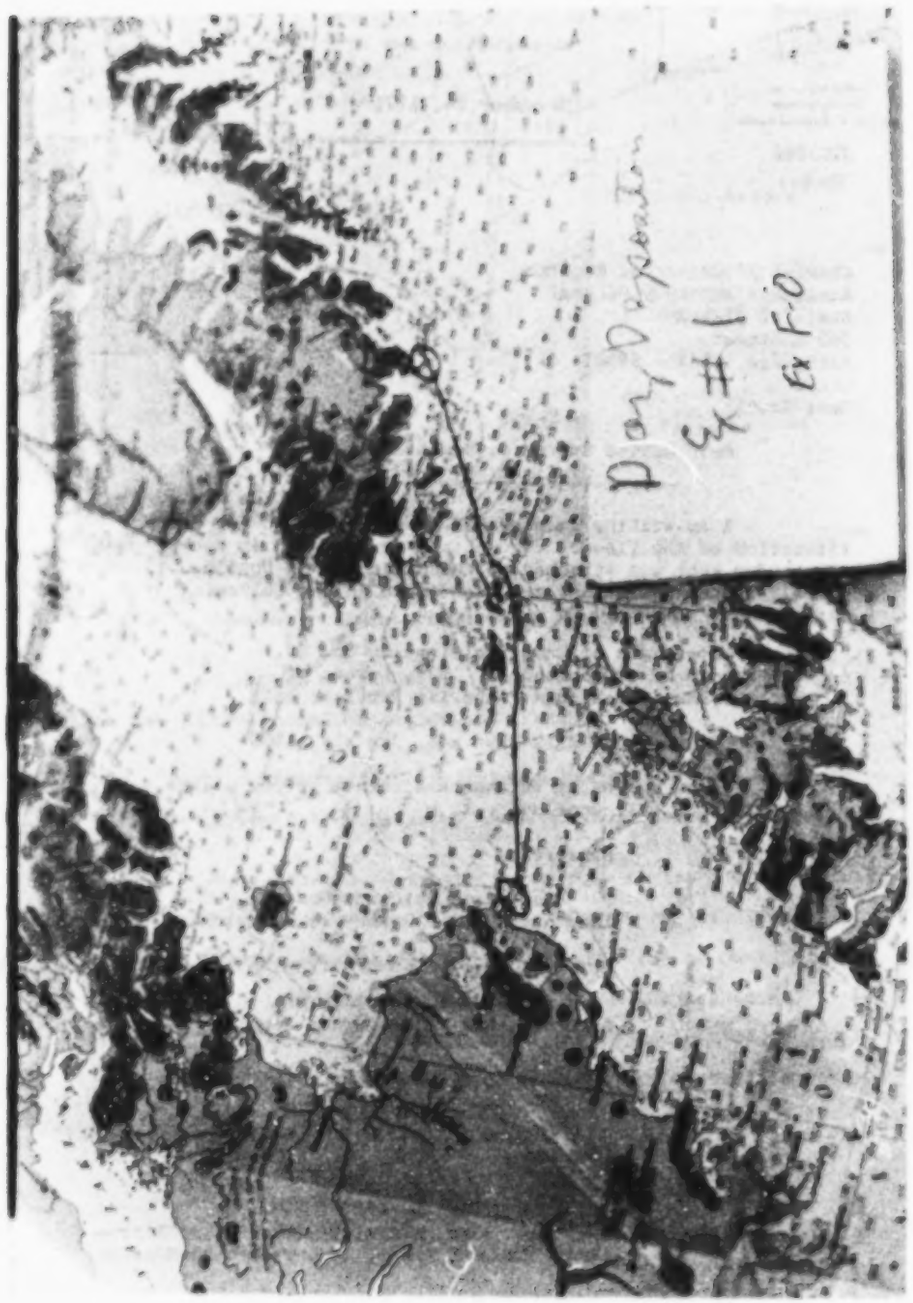
Charles F. Connelley, Jr.
Fishery Management Agent

Deft's #2
9-10-71
[illegible]

F-J-1

Exhibit "F-J-1" - Letter to Harley Adams, Coho, Alaska, from Charles F. Connelley, Jr., Fishery Management Agent, U.S. Department of the Interior, Fish and Wildlife Service, dated July 18, 1957 regarding Mr. Adams' violation of Section 109.12 of the Alaska Commercial Fishery Regulations and the request for him to appear at the Fish and Wildlife Service Office in Kenai, Alaska on Monday, July 22, 1957 at 2:00 P.M.

DX FO



BEST COPY AVAILABLE

DX HT

File with U.S. Exhibit Chayes - Meeker letter Copy in our Exhibit Simon Affidavit

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

November 24, 1971

JIC:EFB
90-4-1

RECEIVED
Department of Law
NOV 29 1971
Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Charles K. Cranston, Esquire
Assistant Attorney General
State of Alaska
360 K Street
Anchorage, Alaska 99501

Dear Chuck:

Re: United States v. State of Alaska,
Civil No. A-45-67

I am writing in response to your request for identification of the fishery regulations referred to in the memorandum that was attached to the Affidavit of Donald J. Simon. These regulations are identified in the following manner:

Department of Commerce Circular No. 25, 16th ed., December 19, 1929, Bureau of Fisheries, Alaska Fisheries Service; and

Circular No. 251, 21st ed., Jan. 19, 1935

If we can be of further assistance to you please do not hesitate to call upon us.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By: Edward F. Bradley Jr.
Edward F. Bradley, Jr.
Attorney, Marine Resources Section

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff	)	
v.	)	CIVIL NO. A-45-67
STATE OF ALSAKA, Defendant	)	

RECEIVED
Department of Law
NOV 10 1971
Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

A F F I D A V I T

CITY OF WASHINGTON)
) SS:
DISTRICT OF COLUMBIA)

Donald J. Simon, duly sworn, deposes and says:

1. That he is Chief of the Records Services Division of the United States Department of State.

2. That in that capacity he has custody of the Central Foreign Policy files of the U.S. Department of State.

3. Attached to this affidavit is a true and correct copy of the portion of the memorandum dated April 23, 1962, file and document Number 894.245/4-2362 relating to Cook Inlet and the letter dated May 3, 1962, from Abram Chayes, Legal Adviser, to Frank Barry, Solicitor of the Department of the Interior and the letter dated July 3, 1969, from Leonard Meeker,

Affidavit of Donald J. Simon, dated September 30, 1971, with attachment referred to in No. 3 of affidavit.

Legal Adviser, to Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

Donald J. Simon
Donald J. Simon
Chief, Records Services Division
U.S. Department of State

Subscribed and sworn to before me
this 30 day of September, 1971

Edith F. McCormack
Notary Public in and for
the District of Columbia

(Seal)

My commission expires September 30, 1975.

Cook Inlet

A letter of April 17, 1962, from Frank J. Barry, Solicitor, Department of the Interior, raises certain questions concerning Cook Inlet in which Alaska intends to offer for sale certain oil and gas leases. The location of the relevant areas is not known. The same research procedure described above in connection with the Shelikof Strait was developed for Cook Inlet which, apparently, Alaska claims as an historic bay. No basis was found to support the Alaskan claim.

1. Cook Inlet. Cook Inlet lies between Cape Elizabeth (Kenai Peninsula) and Cape Douglas (Alaska Peninsula). The two capes are about forty-five miles apart.

2. Absence of claims: State papers. No relevant mention of Cook Inlet has been found in the records of the Department.

3. Department of Commerce fishing regulations. The Cook Inlet fishing regulations contained in the 1929 and 1935 Department of Commerce regulations, applicable to both nationals and aliens, cited above, do not limit fishing beyond a three-mile limit drawn without regard to the historic bay claim, according to Dr. Pearcy who plotted the areas regulated on Coast and Geodetic Survey map 8554 (Cook Inlet - Southern Part), Oct. 16, 1961. It is not known whether regulations issued by the Department of the Interior purport to do so.

4. Treaty of Cession. The Convention ceding Alaska sheds no light upon the status of Cook Inlet. Nor is the Blaine Bering Sea correspondence useful.

5. The Kodiak case. In 1892 the District Court for the District of Alaska held in The Kodiak, 53 Fed.Rep. 126, that the United States could properly assert "territorial jurisdiction" over Cook Inlet. The Kodiak was seized at 59°9'N., 152°41'W. Dr. Pearcy plotted this point on Coast and Geodetic Survey map 8554; using a forty-five mile long line drawn between Capes Elizabeth and Douglas, the Kodiak was seized about ten miles north into the Inlet. It was at least 22.9 miles from the nearest shore.

/The

The decision in The Kodiak rests in part upon the thesis that conservation of the sea otter within a three-mile limit could not be adequately carried out if unrestricted hunting were to take place immediately beyond that limit. It rests further upon a statement by Chancellor Kent that the United States could reasonably exert exclusive control over waters on the near side of a line drawn from the southern cape of Florida to the Mississippi, and other supposed authorities are cited. It suggests that the seizure would not have been undertaken unless the government had asserted "territorial jurisdiction" over the Cook Inlet waters -- an assertion which, having "a political character" is said to be excluded from judicial review.

6. Closing lines. The Department of the Interior has in the past evidently used a ten mile closing line to demarcate that part of Cook Inlet which is internal in character. This line connects the East and West Forelands. If, alternatively, a twenty-four mile closing line is used, Dr. Pearcy indicates that it would cut across the Inlet at Cape Kasilof, Kalgin Island and Harriet Point.

cc: L - Mr. Meeker
L/SFP - Mr. Yingling
L/FE - Mr. Czyzak
RFX/GE - Dr. Pearcy

L:L/UNA:HReis:ml:4/23/62

File: Disc. Memorandum Cite

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff	
v.	CIVIL NO. A-45-67
STATE OF ALASKA, Defendant	

S T I P U L A T I O N

The defendant, State of Alaska, and the plaintiff, United States of America, hereby stipulate for the purposes of the above-entitled litigation that:

1. The United States has produced the affidavits of Horace F. Shamwell and Donald J. Simon, attached hereto as Exhibits A and B.

2. Upon production of the portion of the memorandum identified in paragraph 5 of Mr. Simon's affidavit that relates to Cook Inlet and to the letters identified in his affidavit, the defendant State of Alaska stipulates that it will not require production of any of the materials and documents sought in its motion of June 29, 1971, and August 5, 1971, except that if any documents or files specifically referred to in the portion of the memorandum produced are included within the materials and documents sought in its motions identified above, defendant reserves the

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff v. STATE OF ALASKA, Defendant	)	CIVIL NO. A-45-67

A F F I D A V I T

CITY OF WASHINGTON)
) SS:
DISTRICT OF COLUMBIA)

Horace F. Shamwell, Jr., duly sworn, deposes and says:

1. He is an attorney in the Office of the Legal Adviser of the Department of State and was formerly assigned to the Office of the Assistant Legal Adviser for Ocean Affairs.

2. This office maintains the files of the Office of the Legal Adviser of the Department of State relating to Cook Inlet.

3. The file located in the Office of the Legal Adviser identified in paragraph 4 of the affidavit of July 1971, attached as Exhibit A to the United States Memorandum in Support of Plaintiff's Opposition to Defendant's Motion for Order Compelling Production of Documents for Inspection and Copying (FRCP 37) dated June 18, 1971, as "Cook Inlet, Status of" was formerly identified as "L/SFP Cook Inlet, Status of".

EXHIBIT A

right to seek production of such documents or files to which specific reference is made.

3. The parties furthermore agree that the production of the portion of the document identified in paragraph 5 of Mr. Simon's affidavit does not constitute a waiver of any privilege that the United States may have with respect to the other portion of the document or other documents not yet disclosed. The United States does waive any objection it may have as to the privileged status of the portion of the document disclosed.

Dated this day of October, 1971.

FOR THE STATE OF ALASKA:

John E. Havelock
Attorney General

By _____
Charles K. Cranston
Assistant Attorney General

FOR THE UNITED STATES OF AMERICA:

_____
Jonathan I. Charney
Attorney, Department of Justice

4. None of the files of the Office of the Legal Adviser contain background memoranda or other written material prepared in connection with the research for and drafting of the letter dated May 2, 1962, from Abram Chayes, Legal Adviser, to Frank J. Barry, Solicitor of the Department of the Interior nor for the letter dated July 3, 1969, from Leonard Meeker, Legal Adviser, to Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

Horace F. Shamwell, Jr.
Office of the Legal Adviser
Department of State

Subscribed and sworn to before me
this 28th day of September, 1971

Erminia R. Scarrino
Notary Public in and for
the District of Columbia

My commission expires My Commission Expires Sept. 14, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff	)	
v.	)	CIVIL NO. A-45-67
STATE OF ALASKA, Defendant	)	

AFFIDAVIT

CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA) SS:

Donald J. Simon, duly sworn, deposes and says:

1. That he is Chief of the Records Services Division of the United States Department of State.

2. That in that capacity he has custody of the Central Foreign Policy files of the U.S. Department of State.

3. That one of his responsibilities in that position is to conduct official searches of the files of the U.S. Department of State for documents on subjects or incidents specified in the request.

4. That he has conducted a search of the files of the Department of State for records of research done in preparation for the letter dated May 3, 1962, from Abram Chayes, Legal Adviser, to Frank Barry, Solicitor of the Department of the Interior and the letter dated July 3, 1969, from Leonard Meeker, Legal Adviser, to Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

EXHIBIT B

569-731 O - 75 - 29

5. The only record of the research relating to these letters is a memorandum dated April 23, 1962, file and document number 894.245/4-2362.

6. The memorandum consists of two parts with only the latter part relating to Cook Inlet and the above identified letters.

Donald J. Simon
Chief, Records Services Division
U.S. Department of State

Subscribed and sworn to before me
this 30 day of September, 1971

Elizabeth F. McCormack
Notary Public in and for
the District of Columbia

My commission expires September 30, 1975.

DX HT 1

Records of waters of Cook Inlet off the coast of Alaska

INCO-Fish/US - Fish and Fish industry for U.S.
POL 33-1/US - Waters and boundary waters for U.S.
POL 33-4/US - Territorial waters of U.S.
POL 33-6/US - High seas off U.S.
711.022 - Territory, including territorial waters of US.
711h.022 - Territory, including territorial waters of Alaska
811.245 - Fisheries for United States
811h.245 - Fisheries for Alaska
611.11h46 - Fisheries treaties and agreements between the U.S. and Alaska
611.11h461 - Fisheries Commissions between the U.S. and Alaska
811.014 - Territory of U.S.
811.628 - Fisheries U.S.

Office Lot Files for the following:

U/FW - Special Assistant for Fisheries and Wildlife
IR - International Resources Division
L/E - Assistant Legal Adviser for Economic Affairs
ER - Economic Resources Division.
ITR/IRD - International Revources Division
S/FW-COA - Special Assistant to the Secretary for Fisheries and Wildlife

Pfls' Ex 3 for id (Simon)
6/3/71 [illegible]

Exhibit "H-T-1" - Exhibit 3 to Donald J. Simon's Deposition - Records of waters of Cook Inlet off the coast of Alaska.

DX HX

AD HOC COMMITTEE ON DEMARCATION OF UNITED STATES BOUNDARIES

RECEIVED

JUN 2 4 1971

MINUTES OF JUNE 1, 1970, MEETING

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson (Geographer) Horace F. Shamwell (Legal Adviser's Office Chairman) LCDR Karl Wm. Kieninger (SFW)
ESSA:	Adm. H. D. Nygren Douglas C. Dodge
Department of the Interior:	Francis A. Cotter
C&GS/ESSA:	J. F. Richardson Capt. J. O. Boyer
Department of Justice:	Jonathan I. Charney Bruce C. Rashkow
Coast Guard (DOT):	Rear Admiral W. L. Morrison Lt. Michael Reed

It was decided that at the next meeting ESSA would submit latest charts of entire Gulf of Mexico (Key West to Mexican border) and that Coast Guard would supply to Dr. Hodgson its charts of areas in which closing lines had originally been drawn for this region.

The group agreed to engage in a trial run of reviewing the existing charts using the Gulf of Mexico as the initial example.

Dr. Hodgson indicated that he had original charts of Alaska, done before the asterisk problem was discovered, and was prepared to review them.

Mondays at 2:30 p.m. was decided upon as the regular meeting time.

Defendant's Exhibit 6 to Deposition of Robert Hodgson dated December 9, 1971: Minutes of Ad Hoc Committee on Demarcation of United States Boundaries, June 1, 1970 through January 4, 1971.

AD HOC COMMITTEE ON DEMARCATION OF UNITED STATES BOUNDARIES

MINUTES OF JUNE 8, 1970, MEETING AT 10:30 A.M.

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson (Geographer) 101-22022 Horace F. Shamwell (Legal Adviser's Office) LCDR Karl Wm. Kieninger (SFW)
ESSA:	H. J. Dolan 146-8066 Ted Smolker
ESSA/C&GS:	Capt. J. O. Boyer 146-8741 J. F. Richardson
Coast Guard:	Lt. M. W. Reed 118-67070 Capt. G. H. Patrick Bursley
Department of Justice:	Jonathan I. Charney
Department of Commerce:	R. B. Ellert

This was the second informal meeting of the Committee which as yet has not been formally organized under the Law of the Sea Task Force. All the agencies presently represented on the Committee were present at the meeting. The Chairman, Mr. Shamwell, commented to the group that he had not yet seen the reply letter from the Secretary of Commerce approving the Secretary of State's establishment of the committee under the Law of the Sea Task Force. He expressed the hope that this letter would be forthcoming in the near future so that the committee's work would proceed on a formal basis.

The representatives of ESSA expressed concern that the committee's functions were not consistent with the statutory authorities of the various agencies represented. In particular, they expressed concern that the committee would assume the cartographic functions of ESSA with respect to the drawing of U. S. baselines. The representative of the Department of Justice indicated that it was his understanding (and this understanding was confirmed by other members of the committee) that the Ad Hoc Committee would take up where the drawing of baselines had been left off when certain discrepancies were discovered in the interpretation

of ESSA's symbols, i.e., would consider the documents drafted by the Department of State's Geographer, Dr. Hodgson, and correct any interpretation or errors that were present on those documents. The ESSA representatives opted in favor of ESSA doing the charting on the latest ESSA charts and presenting these representations to the Ad Hoc Committee for comment. The representative of the Department of Justice indicated that this would necessitate a great deal of time that was not available in light of the present needs of reporting at least tentative U. S. baselines that could be used in pending domestic litigation and with respect to problems existing in the international sphere.

It was finally agreed that the committee begin its work using Dr. Hodgson's charts, some of which are several years out of date, and present its results to ESSA for recharting on its latest charts. These documents would then be presented to the committee for review and any additional comments which the committee deemed it necessary to make.

The first task taken up by the committee was a review of the Gulf of Mexico baselines. This review was initiated at the present meeting and will be continued at the next regular weekly meeting.

The Chairman of the committee introduced a request from Mr. Stevenson's office that the committee interrupt its present schedule and take up the question of Alaskan baselines in light of a request from Senator Stevens' office for an opinion on the effect of the President's seabed decision on the Alaskan continental shelf. The committee agreed that this request would be honored. The meeting was then adjourned.

AD HOC COMMITTEE ON DELIMITATION
OF UNITED STATES CONTINENTAL

MINUTES OF JULY 17, 1970, MEETING

PARTICIPANTS:

Department of State:	Horace F. Shamwell, Jr. Robert D. Hodgson
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Interior:	Francis A. Cotter
Department of Commerce (NOAA):	Adm. H. D. Nygren
ESSA:	H. J. Dolan

The Committee met on July 17, 1970, at 1:30 p.m. in the Office of the Geographer of the Department of State, Dr. Robert Hodgson. The Committee first reviewed what had been accomplished at the previous meeting in going over charts of the coastline of Alaska. Specifically, on chart number 8102, United States territorial sea limits have been represented up to the equidistance line on the southeastern boundary between Alaska and British Columbia in the area of the Dixon entrance, including high seas enclaves. On chart number 8152 it was decided to use Wolk Point, which is at the tip of an island close to the shore, as the headland for the closing line of the bay in Wolk Harbor.

At the current meeting, discussion began with chart number 8152, which illustrates the area of Dixon entrance to Chatham Strait. In the area of Coronation Island, the line between Alikula Bay and Egg Harbor has been taken out. At Roller Bay no closing line was to be shown because no closing line that affects the three mile limit would meet the 45° test of measuring the angle between the proposed closing line and the next possible headland.

There was discussion among the group about that formulation that under the headland theory a point should be selected only where the angle between the closing line determined thereby and a line connecting it with the next available headland within the bay forms an angle of 45° or greater. The rationale behind this rule of thumb is that a closing line should be drawn between points where the coast tends to face more

into the bay than the open sea. The Committee agreed to apply this formula where reasonable, realizing that it has no precedent either under domestic law or international law. It was recognized that while there is no such specific formulation under domestic or international law, some standard has to be used in conducting the Committee's work and this one appears to be reasonable and logical in the absence of any other. It was decided, however, that each particular case would be decided on its own merits, and where the 45° angle test would provi unreasonable results, it would not be used. An appropriate notation o the reasons for or against applying the rule will be noted in the min

The following other charts were reviewed and it was decided th there would be no changes in the existing markings made by Dr. Hodgson: Nos. 9450, 9452, 9453, 9455, 9461 and 9463. On chart number 9467, representing Pegik Bay, a juridical bay, it was determined that Pegik Point is a headland and that the closing line would be drawn between the islands in front of the bay.

In addition, charts Nos. 9471 and 9476, were reviewed, and it was determined that they should not be changed.

Mr. Burdick Brittin, Deputy Special Assistant to the Secretary of State for Fisheries and Wildlife, joined the meeting after it had commenced and pointed out certain considerations which he felt the group should make in attempting to formulate even a provisional United States position on baselines. He took issue with the position that it would be easier to correct a territorial limit determination by extending it based on newly discovered evidence rather than to draw back from a line determined upon incorrect or incomplete data. He further pointed out that although he saw no difficulties under domestic law to the approach envisioned, he did see problems in the international area. Specifically, he pointed out that the United States is a party to several international agreements which specify areas in which foreign governments may conduct fishing activities and that these areas which are described are within the contiguous zone. He pointed out that if, as a result of the Committee's work, a conclusion were reached as to the extent of the United States contiguous zone which did not coincide with the descriptions contained in such international agreements, the United States would be placed in a compromising situation.

Mr. Charney of the Justice Department expressed the opinion that if it were discovered that the contiguous zone did not extend as far out to sea as described in such agreements, there would be no problem since the United States would be bound to recognize the foregin rights in the areas as described in the agreement. Mr. Brittin explained, however, that if this were the case, we would be concerned with the

high seas and not areas under our jurisdiction. Mr. Charney pointed out that they would have these rights in the high seas anyway. Mr. Brittin continued that if the Committee would arrive at such conclusions, arrangements would have to be made for amending these international agreements. The Chairman commented that the results of the Committee's work may only be provisional and that this may not form the basis for proceeding to amend on a long-term basis existing international agreements.

Mr. Brittin further questioned whether there was really such an urgent need for the compiling of such material at this time, in light of the long time which had elapsed under existing conditions. All the members of the group agreed that the Coast Guard had expressed a rather pressing need for information useful in the conduct of enforcement activities and that perhaps it would be helpful if the Coast Guard specified just what its most immediate needs were. As no representative of the Coast Guard was present, this problem could not be resolved at the time.

The Chairman indicated that he had drafted papers setting up the Committee on a formal basis, including the description of the Committee's purposes and limitations. He requested each member to review these papers and to submit comments before the next meeting which was set for July 27, at 1:30 p.m. in Dr. Hodgson's office.

At this point the meeting was adjourned.

AD HOC COMMITTEE ON BOUNDARIES
OF UNITED STATES COASTLINE

MINUTES OF JULY 27, 1970, MEETING

PARTICIPANTS:

Department of Justice:	George S. Swarth Jonathan I. Charney
ESSA:	Lt. John K. Callahan, Jr. Douglas Dodge Rear Adm. Harley D. Nygren
Department of State:	Horace F. Shamwell, Jr. Robert D. Hodgson William L. Sullivan, Jr.
Coast Guard:	Lt. Michael Reed
Department of Interior:	Francis A. Cotter

The Committee met in Dr. Hodgson's office at 1:30 p.m. on Monday, July 27, 1970.

Mr. Shamwell asked if there were any substantive comments on his draft memoranda, distributed at the last meeting, regarding organization of the Committee. None were offered, and Mr. Shamwell undertook to revise the drafts in light of other comments submitted, and to distribute the revision at the next meeting.

Dr. Hodgson distributed copies of his letter of July 22 to Admiral Nygren, transmitting copies of the following C&GS Charts, with lines drawn thereon as agreed at the last meeting:

8102	9458
8152	9459
9450	9460
9452	9461
9453	9463
9455	9467
9456	9471
9457	9476

The letter requested transmittal of the charts to the Coast Survey for final operations, and referred to three problems remaining for future Committee consideration: (1) designation of the documents as "provisional"

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or the like, (2) disclaimer with respect to international boundaries, and (3) arrangements for checking overlap on adjacent sheets.

Lieutenant Reed brought to the Committee's attention a request made by the U.S.S.R. in relation to the recent boarding of a Russian ship found within three miles of Redding Rock, off the California coast. The request was for identification of the baselines claimed by the United States in the Pacific between latitudes 34° N and 40° N. It was agreed that the best response at this time would be to say that we use the published C&GS charts and the principles of the Convention on the Territorial Sea and the Contiguous Zone.

The Committee then proceeded to consideration of charts of the north coast of Alaska, as follows:

1. No. 9478. It was agreed that the closing line of Demarcation Bay should run, on the west, to the long coastal island that is crossed by a direct headland-to-headland line; from that island, it should run by the shortest line to the original western headland. West of that line, the waters between the island and the mainland will be territorial sea. Approved.

2. No. 9477. Humphrey Bay will be crossed by a line between the headlands as proposed. The line closing the entrance to the Agnun Lagoon will be pulled back, so as to run to and from the ends of the long island that screens the mouth, slightly landward of a direct closing line between the mainland headlands. The islands occupy more than 70% of the width of the entrance, and are considered screening islands; the waters outside them are not enclosed waters in any realistic sense. Approved.

3. No. 9475. From Kangigivik Point a closing line will be run to a point on the coast at about 145° 08' 50" W. There is no other potential closing point farther east that meets the 45° test. (That is, no point such that a line between the two potential points makes an angle of 45° or more with a closing line drawn from the outer point to the opposite headland.) Approved.

4. No. 9474. No change. Approved.

5. No. 9473. Admiral Nygren pointed out that two "Survey Targets" in Newport Entrance are actually on small islands, though this cannot be ascertained from the chart. The same was true of a "Survey Target" on No.

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9474. The fact will be noted, but the points will not be used unless the charts are revised to show that these are islands. Approved.

6. No. 9472. The western headland of Prudhoe Bay will be moved back to a major turn in the trend of the coast, at about 70° 21' 42" N. Approved.

7. No. 9470. Approved.

8. No. 9469. From Atigaru Point a closing line will be drawn south to the shore at about 150° 34' W. Approved.

9. No. 9469) No. 9468) C&GS will check the survey sheets to see if the indentation between Atigaru Point and Cape Halkett meets the semicircle test. In doing so, the Kogru River mouth should be closed off by a line running SE from Makluina Point. At the next meeting, C&GS will report the results of its planimetry of the area, and will bring the survey sheets to show the area measured.

10. No. 9466. Cape Simpson is to be used as the western headland of Smith Bay. The published charts do not show enough of the coast to make sure where the eastern headland should be; C&GS will look at the survey sheets and report whether the headland should be at Drew Point or farther south.

11. No. 9465. Dease Inlet will be closed by a line from Christie Point on the west, to Sanigaruak Island, and along the island screen to Kulgurak Island, which is essentially part of the mainland, and so is used as the eastern headland. Approved.

12. No. 9464. Approved.

13. No. 9462. The Seahorse Islands will be treated as a single island, intersected by a headland-to-headland line. The line closing Peard Bay is drawn from Point Franklin on the west to the NW extremity of the Seahorse Islands to the small island just west of the tip of the peninsula forming the eastern headland. The island is treated as substantially part of the peninsula. Approved.

14. No. 9454. The lines will be corrected to ignore a rock near the shore which is not known to be above mean low water. Approved.

15. No. 9451. The lines will be corrected to ignore rocks off Kiliahlik Point which are not known to be above mean low water. Approved.

This completed the north coast of Alaska. It was agreed to take up the west coast (California, Oregon, Washington) at the next meeting, as the Coast Guard has its more pressing problems there and those charts are small scale and can be dealt with rather quickly. The rest of the Alaska coast will be dealt with thereafter.

The next meeting was scheduled for 10:30 a.m. on August 3, in Dr. Hodgson's office.

AD HOC COMMITTEE ON DELINEATION
OF UNITED STATES COASTLINE

MINUTES OF AUGUST 3, 1970, MEETING

PARTICIPANTS:

ESSA:	Lt. John Callahan Douglas C. Dodge
Department of Justice:	Jonathan I. Charney George S. Swarth
Department of State:	Robert D. Hodgson Horace F. Sharswell, Jr.
Department of Interior:	Francis A. Cotter
Coast Guard:	Lt. Michael Reed

Two determinations had been postponed from the previous meeting concerning the north coast of Alaska. ESSA representatives had been asked at the previous meeting to calculate the area within Harrison Bay, the westernmost portion of which did not appear on Coast and Geodetic Survey charts 9468 and 9469. It was determined that the total area of the bay is 124.8 square nautical miles. One hundred twenty-seven (127) nautical miles are needed to meet the semicircular test using the headlands chosen. It was decided that no other appropriate headlands would enclose an area meeting the semicircle test and Harrison Bay was thus determined not to be a juridical bay.

Smith Bay was determined to be a legal bay but a difficulty arose in choosing headlands because there is no large scale chart of the inner bay. A best estimate of appropriate headlands was made on Coast and Geodetic Survey chart 9466, third edition 1968, showing the entrance to Smith Bay, and the group agreed upon Drew Point. This completed work on the north coast of Alaska.

Charts of the Pacific Coast (California, Oregon and Washington) were reviewed with the understanding that: (1) no bays would be closed unless the outer limit of the territorial sea were affected by the closing (3) no asterisk would be used as a baseline point and (3) no pier or breakwater would be used unless it were part of a permanent harbor work. Charts 5101, 5202 and 5302 had no closed bays or other

unusual features. Chart 5402 included closing lines across Monterey Bay and San Francisco Bay (Pt. Bonita to Pt. Lobos), but there was no disagreement as to the choice of headlands and no changes were made. Bodega Bay was closed on No. 5502. After some discussion of configuration of the water area of the Bay, the line was approved by the group.

Rocks in the area of Blunts Reef (off Cape Mendocino, chart 5602) raised a question because their names appear in vertical type, which is generally used to designate islands. However, they are here designated by asterisks and listed as rocks awash in the Coast Pilot so were not used as baseline points. Charts 5702 and 5802 presented no questions and were approved. The Columbia River breakwater appears on charts 5902 and 6002 but does not match up on overlay. The breakwater extends further seaward on chart 5902 but 6002 will be used because it is a more recent chart (1968 vis 1967).

A closing line was drawn across Willapa Bay from Leadbetter Point to Cape Shoalwater on chart 6002. Grays Harbor was also closed by lines drawn from its breakwaters. Chart 6102 had no closed bays or other issues of concern.

A number of charts of the Gulf Coast of Florida were reviewed to get the group's opinion of a number of principles used on them. Dark black stipple was used as a proper baseline around Dry Tortuga, Chart 1351 and on chart 1254 (where it appeared as the fourth gradation of black stipple when working from the sea landward and did not contain depth soundings).

A number of islands off the coast of Florida have been created by dumping spoil. Since only naturally formed islands have territorial seas there is a question as to whether these islands may become naturally formed over time. It was decided that those marked as spoil, or which are obviously so because of location or description, will not be used. If it is not reasonable to assume by looking at the chart that an island has been created by spoil, it will be used.

The next meeting was scheduled for 1:30, Monday, August 10, in Dr. Hodgson's office.

AD HOC COMMITTEE ON [illegible]
OF UNITED S[illegible] CONF[illegible]

MINUTES OF AUGUST 10, 1970 MEETING

PARTICIPANTS:

Department of State:	Horace F. Shumwell, Jr. Robert D. Hodgson
Coast Guard:	Lt. Michael Reed
Department of Interior:	Francis A. Cotter
Department of Justice:	Jonathan I. Charney George S. Swarth
ESSA:	Lt. John K. Callahan Hugh Dolan

The meeting was convened at 1:30 p.m. in Dr. Hodgson's office. Lt. John Callahan showed the committee one chart on which the U.S.C. and G.S. had inked the three and twelve mile lines that the committee had approved. He stated that the work was done with a point of size .010" of thickness. He noted that the ink would run if a thicker point was used. It was explained that the U.S.C. and G.S. has inked the first part of the charts, those that will not be used, with a .010" point. The ensuing discussion revolved around the questions of how accurate the line had to be and how distinguishable it should be from other markings on the charts. Lt. Reed stated that the thickness of .040" would be best for the Coast Guard purposes. The committee decided that a .010" point would be preferable for this provisional set but that in the ultimate official set it would have a thinner line, perhaps highlighted in color.

Dr. Hodgson agreed to review the inked charts that Lt. Callahan had brought to make sure that the inking was done correctly.

Lt. Callahan asked that a set of rules be devised, embodying the principles upon which the committee has been proceeding, so that if the person doing the inking should find some small omission in an arc, he could reconstruct it without having to go back to the committee for further instructions. It was agreed that this was a good idea and would be done.

The Chairman questioned the committee members with respect to absences from town or unavailability in the coming weeks. Dr. Hodgson indicated that he would be away on August 24. The committee decided that a meeting would nevertheless be held on that date, at which time the question of disclaimer language and other procedural matters could be taken up. The committee then began to review the following charts that Dr. Hodgson had prepared:

1. No. 1250. Sebrero Key was not used because the lighthouse records indicate that it is not a low-tide elevation despite the fact that the name is in vertical type. Approved.

2. No. 1251. Approved.

3. No. 1252 (5th ed., Dec. 4, 1967). This document had already been corrected to eliminate asterisks and low-tide elevations not within three miles of the low-water line of a high-tide elevation. Approved.

4. No. 1255. It was decided to draw no closing line for Pine Island Sound as it would not affect the three-mile limit. Approved.

5. No. 1257. Dr. Hodgson pointed out that the light green area near North Point was used despite the possibility that it is an error due to the fact that it lacks a dotted border. He stated that the coloring looks too neat to be a mistake. Approved.

6. No. 1261. Approved.

7. No. 1262. Approved.

8. No. 1264. Dr. Hodgson had eliminated the closing line from Crooked Island to Lands End because its angle seemed to have no relation to the bay it was supposed to enclose. A closing line was drawn from the peninsula that is approximately 1 1/4 miles south of Fox Rise to the tip of Lands End and then from the other end of the island on which Lands End is found to the mainland between the tips of the jetties. Approved.

9. No. 1264. Approved.

10. No. 1265. Approved.

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11. No. 1266. A closing line for Mobile Bay was added using Big and Little Dauphin Islands as screening islands between the headlands at Mobile Point and Cedar Point. Approved.

12. No. 1267. High Seas enclaves are designated in Mississippi Sound. Approved.

13. No. 1268. The closing line in front of Lake Borgne was discussed. It was decided that the limit of the mainland in this area was the western side of Grand Pass. A closing line was then drawn from the end of the mainland at Grand Pass to Henderson Point. Approved.

14. No. 1270. A closing line from Point Lydia to the Northern tip of Main Pass was drawn between the natural entrance points at Chicat Island and Breton Island. Approved.

15. No. 1271. This chart will not be used because the line that was drawn on Chart No. 1270 makes all of the water in No. 1271 inland waters.

16. No. 1272. A closing line from North Pass to Dead Women Pass was added as well as one for Garden Island Bay. Approval of this chart was deferred because a new edition is expected very soon.

The next meeting was set for 1:30 p.m., August 17, to continue with the Gulf Coast and possibly the remaining area of Alaska.

The meeting adjourned at 4:00 p.m.

[illegible] OF THE UNITED STATES
[illegible] DELIMITATION

MINUTES OF AUGUST 17, 1970 MEETING

PARTICIPANTS:

Coast Guard:	Lt. Michael Reed
Department of Interior:	Denton R. Moore Francis A. Cotter
Department of Justice:	Jonathan I. Charney George S. Swarth
ESSA:	Hugh Dolan Cdr. R. N. Buffington
CGGS:	J. F. Richardson
Department of State:	Dr. Robert D. Hodgson Horace F. Shatwell, Jr.

The meeting was held in Dr. Hodgson's office at 1:30 p.m. Mr. Richardson presented the group with an example of the use of red ink in drawing the .040" width line that the committee had decided upon at the last meeting for indicating the 3 and 12 mile lines. He indicated that such a red line would appear more vividly on the documents than the black line, but when reproduced on smaller scale documents and photographed in black and white would make little difference. After some discussion the group decided to continue use of the black lines in a width of .040".

Dr. Hodgson reported to the group that there would be no new Chart No. 1272 available within the next few weeks as originally predicted. As a result it was decided to begin to work with the available Chart No. 1272. Dr. Hodgson indicated that the closing line in East Bay had been removed because it does not affect the extent of the territorial sea or the contiguous zone. This decision is in line with the committee's decision of not drawing closing lines where they do not affect the extent of United States off-shore jurisdictional limits. It was brought out that an area designated as "spoil" on the available Chart No. 1272 which was indicated actually does not exist at all. This fact is borne out by more recent surveys. It was decided to table examination of this chart until a later time when a newer edition would be available.

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Cdr. Duffington again raised the question of the committee's supplying to Coast Survey drafters a list of working principles employed by the group in deciding where to draw the pencil arcs on charts submitted to [illegible] for inking so that these drafters may have some guidelines to use in the future when actual drafting tasks are forwarded to them. The Chairman indicated that this question had come up at the last meeting and that the committee had decided to draw up such a set of principles. He asked for volunteers to perform this task and, there being none, offered to do the same himself.

The following charts were then taken up by the committee seriatim:

1. No. 1273. This chart had been temporarily misplaced, but Dr. Hodgson indicated that it had not been sent forward to [illegible] for inking. Consideration of this chart was thus postponed.

2. No. 1274. In this area, which covers Timbalier and Terrebonne Bays, it was decided that a closing line following the string of screening islands reaching across the bay areas should be drawn. Approved.

3. No. 1275. No closing lines were drawn in this area, the decision previously having been made by the State Department that Caillou Bay is neither a historic nor a juridical bay. There was no objection to this conclusion. Approved.

4. No. 1276. A closing line was drawn across East Cote Blanche Bay to Atchafalaya Bay, from South Point on March Island to Point Au Fer on Point Pointaufer Island. Approved.

5. No. 1277. Approved.

6. No. 1278. Approved.

7. No. 1279. Approved.

8. No. 1280. Approved.

9. No. 1282. In this area, including Galveston Bay and its approaches, a closing line was drawn across the Bay to Bolivar Peninsula. High seas enclaves were eliminated. Approved.

10. No. 1283. Approved.

11. No. 1284. The group engaged in a somewhat detailed discussion of the status of the status of Matagorda Island off the coast of Texas in the area of San Antonio Bay. Dr. Hodgson contested that he had always regarded this so-called "island" as part of the mainland in light of characteristics which connect it to the mainland. Discussion of this point was centered about the question of whether there are high seas enclaves in the area between San Antonio Bay and Matagorda Island. It was decided that a closing line should be drawn between Descu Point on Matagorda Peninsula to the Headland on Matagorda Island. Approved.

12. No. 1285. Approved.

13. No. 1286. The problem of the disparity between the length of the breakwater indicated on earlier charts and that indicated on the latest charts was discussed. It was decided to use the information on the most recent charts. Approved.

14. No. 1287. After some discussion it was decided that the stretch of land comprising Padre Island and Mustang Island for all practical purposes should be regarded as mainland. This decision was made in light of the integral connection that this area of land has with the mainland and the fact that at times it is actually connected with the mainland. As a result of the decision to consider these islands as part of the mainland, no high seas enclaves will be indicated in Laguna Madre. Approved.

15. No. 1288. Approved.

Dr. Hodgson raised the question of the validity of using a method to establish an "equidistance line" by measuring larger and larger arcs along the coastline following the sinuosities of the coast for the purpose of delimiting offshore boundaries between two adjacent states. This method was contrasted with the internationally accepted method of delimiting an equidistance line by constructing a perpendicular bisector to the line closing off the mouth of a river which, for example, represents the international boundary between the two states. He pointed out that

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this question had arisen because it had been discussed, during the course of the present meeting, that the International Boundary Commission had decided upon the method in question as the means for delimiting the United States-Mexican boundary at the point where the Rio Grande River empties into the Gulf of Mexico. This line will eventually be formalized as a treaty line.

Dr. Hodgson indicated that the only place that he had ever seen this method discussed was in Volume 1 of Shalowitz's Treatise and that it would only have logical application where a particular coastline is very straight and regular. Otherwise, it could result in a disparate allocation of jurisdictional areas as a result of the coastline taking a sharp turn in one direction or another. He indicated that he would soon have to render an opinion as to whether or not this method should be employed.

The committee reached no consensus as to whether or not this method should be used in this case or other cases. Mr. Moore of the Interior Department raised the issue of the effect of using this particular method on delimitations in other areas in which the United States has a significant interest. Dr. Hodgson and Mr. Shewell were of the opinion that the use of a particular method in delimiting one boundary would not necessarily prejudice the United States in agreeing on a delimitation in another area. It was considered important, however, to come to some conclusion as to the wisdom of using this particular method in the Rio Grande area, even though its use would appear to benefit the United States out to the 12-mile limit. The group had no further suggestions to make on the subject and discussion of the matter was terminated.

In connection with the United States-Mexico boundary, Lt. Reed of the Coast Guard indicated a need for provisional boundary lines for fishery enforcement purposes. Dr. Hodgson informed the group that the International Boundary Commission had decided upon a provisional international boundary line for fishery purposes and the group decided that this line should be furnished for the Coast Guard's use and indicated as such a provisional line on the working documents.

At this point the meeting was concluded and it was decided to meet again on August 24, 1970, at 1:30 p.m. in Dr. Hodgson's office. A primary purpose of this meeting would be to discuss the relevant disclaimer language to appear on documents reviewed by the group.

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misinterpretation. Also, a statement was included so as to make it clear that the Coast and Geodetic Survey nautical chart was used as a base chart only.

3. limited use - The Committee decided to omit any statement of limited use as it is contemplated by certain members of the Committee that these documents can be used for purposes other than law enforcement. When the question arose as to the use of these documents for purposes other than law enforcement, particularly in view of the accuracy of the documents, the Committee felt the word "provisional" and the statement of possible revision would suffice to permit future development of a more accurate document.

4. use in navigation - Due to the inaccuracies resulting from a reduction in scale and because no arrangements have as yet been made to keep the documents abreast of the latest marine information, such as "Notice to Mariners," it was decided to include in the disclaimer a statement warning against use of these documents for navigation.

The meeting was adjourned at 3:30 p.m., and the next meeting was set for 1:30 p.m., August 31, 1970, in Dr. Hodgson's office.

AD [illegible]
C. [illegible]

MINUTES OF AUGUST 24, 1970 MEETING

PARTICIPANTS:

Department of State:	Horace F. Shamwell, Jr.
Coast Guard:	Lt. Michael Reed
Department of Justice:	Jonathan J. Charney
Department of Interior:	Denton R. Moore
Department of Commerce:	Douglas Hodgson James F. Richardson Lt. John K. Callahan, Jr.

The Committee met in Dr. Hodgson's office at 1:30 p.m. Mr. Shamwell had to leave the meeting shortly after it commenced. Due to the absence of Dr. Hodgson no charts were reviewed. Mr. Richardson delivered to the Committee the first series of documents inked by the Coast and Geodetic Survey. They were as follows: Nos. 5202, 5402, 5502, 5602, 5802, 5902, 6002, 6102. Five documents on which the Coast Survey had found questionable areas were appropriately marked.

Mr. Shamwell asked for proposed disclaimers, and three were submitted: one each from the Department of Justice, Coast Guard, and Department of Commerce (see attachment A). The Department of Justice draft was used as a base, and the final product is attached (see attachment B).

Discussions were held relevant to the formation of the disclaimer and centered on the following points:

1. internal waters - after some discussion it was determined that the term "inland waters" should be included in the disclaimer since in particular areas, such as bays, lines were drawn by the Committee which delineate inland waters. However, the delineation of inland waters is made in certain areas only and no attempt has been made to define all inland waters on the charts.

2. charts - the question arose as to whether or not "chart" was the correct term to describe the final product of the Committee. After a good deal of discussion the term "chart" was replaced with the term "document" so as to avoid any

ATTACHMENT A

Proposed Disclaimers

Commerce:

This is a provisional delineation of the three and twelve mile seaward boundaries of the coastal United States drawn on a Coast and Geodetic Survey nautical chart. These boundary lines have been drawn and approved by the ad-hoc inter-agency boundary committee and are subject to revision whenever pertinent information becomes available. This delineation is intended for limited use primarily in law enforcement programs.

Justice:

The lines drawn on this chart to delimit the internal waters, territorial sea, and contiguous fishery zone of the United States have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on the chart. They are subject to revision whenever that is required by application or correction of the information shown on the chart or by re-interpretation of the legal principles involved. The outer limits of the territorial sea and contiguous zone terminate wherever they intersect an international boundary; this chart does not attempt to delineate such international boundaries and is not to be understood as asserting or implying where they are located.

Coast Guard:

The lines drawn on this chart, delineating the limits of the territorial sea and the contiguous zone are solely for the use of the U. S. Coast Guard in connection with its law enforcement functions. They do not represent an official determination of the U. S. Government with respect to the delimitation of internal waters, the territorial sea or the contiguous zone.

(CAUTION -- NOT FOR USE IN NAVIGATION)

The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain relevant internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. The outer limits of the territorial sea and contiguous zone terminate wherever they intersect an international boundary. This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located.

AD HOC COMMITTEE OF DEPARTMENTS
OF UNITED STATES GOVERNMENT

MINUTES OF AUGUST 31, 1970 MEETING

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson Horace F. Shanwell
Justice Department:	George S. Swarth Jonathan I. Charney
Department of Commerce:	J. F. Richardson Lt. John Callahan
Interior Department:	Denton R. Moore
Coast Guard:	Lt. Michael Reed Lt. Leo Morehouse

The disclaimer attached to the minutes of 24 August was discussed and changes agreed upon. The approved text is enclosed as Attachment A. The Committee then continued its review with the following charts:

1. No. 8252. No closing line was drawn across Gilmer Bay because the appropriate line would have no effect on the outer limit of the territorial sea. Shelikof Bay was closed from Pt. Mary to Beaver Pt., with the island near Pt. Mary not intersected. A question arose as to whether the island off North Cape (near Whale Bay) is realistically a part of the mainland. The decision was postponed until chart 8254 could be examined.

2. No. 8202. Was reviewed and approved.

3. No. 8402. Yakatat Bay was closed without question. Approved.

4. No. 8457. Icy Bay was closed with the headland on Pt. Riou chosen because it was the only point meeting the 45° test. Approved.

5. No. 8513. Approved.

6. No. 8551. Prince William Sound was closed with a line drawn from island to island totaling approximately 22 miles in length. Approved.

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7. No. 8502. A possible closing line from Cape Resurrection to Cape Fairfield was discussed. However, it was left to be determined whether the enclosed portion met the semicircle test.

8. Nos. 8553 and 8554. Contain the Cook Inlet closing lines. The 24 mile fallback line was drawn from a point just north of Ninilchik Light to Kalgin Island to Harriet Pt. The closing line for Chinitna Bay was revised to begin at a headland which would meet the 45° test. Approved.

9. No. 4556. Approved.

The feasibility of using 8502 to cover a small area in the Gulf of Alaska and another on the Alaska Peninsula was considered. It was decided that the scale of 8502 was insufficient for our purpose. Consequently, one small area in the Gulf of Alaska will not be covered by any chart used in the project. There would be no bay closing lines in this uncovered area. Charts 8710 and 8561 are to be considered to cover the portion of the Alaska Peninsula previously intended to be included on 8502.

10. No. 8500. Pavlof Bay was closed from Black Pt. to Cape Volkoi. Approved.

11. No. 8533. Herendeen Bay was closed from Walrus Island to Port Moller. Approved.

The Aleutian Island charts are to be reviewed at the next meeting, which will not occur until 14 September. The Hawaiian Islands will be covered next.

ATTACHMENT A

(CAUTION -- THIS DOCUMENT IS NOT FOR USE IN NAVIGATION)

The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located.

...UTES OF SEPTEMBER 14, 1970, MEETING

PARTICIPANTS:

Department of State: (Legal Advisers Office)	Dr. Robert D. Hodgson William Salisbury
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Commerce:	D. N. Forehand Lt. John Callahan H. J. Dolan
Department of Interior:	Denton R. Moore
Coast Guard:	Lt. Leo Morehouse

The Committee met in Dr. Hodgson's office at 1:00 p.m. The Committee reviewed the lines drawn by Dr. Hodgson on the following charts and took the action indicated:

1. No. 8252. This chart had been held back pending review of a larger scale chart to determine distance between the Island at North Cape and the mainland. Chart No. 8254 shows that the distance between the island and the mainland is approximately 30 feet at the narrowest point and 100 yards at the widest point. Due to the configuration as well as the water depth it was determined that the island could be considered part of the mainland for the purpose of drawing a closing line to Point Lauder. It was also noted that Chart 8254 identifies the island as North Cape. Approved.

2. No. 8552 This chart had been held over in order to determine from a larger scale chart whether a closing line across the water area that includes Bay Harbor and Whidbey Bay could meet the semicircle test. Dr. Hodgson's check of Chart No. 8528 showed that the semicircle test was not met. Closing lines were therefore drawn across from Fault Pt. to the point south of Killer Bay. Whidbey Bay did not meet the semicircle test individually. A closing line was also drawn west of Cape Mansfield. Approved.

3. No. 8502. This is a very small scale chart that is to be used in areas where there are no satisfactory larger scale charts. Charts Nos. 8710 and 8551 that show parts of the area were reviewed and determined not to be satisfactory. It was determined that Chart No. 8502 would be used at scale rather than reduced as the other charts. Lines will be drawn on this chart only in the areas where no satisfactory larger scale chart is available. At the end of those areas the phrase "Continued on Chart _____" will be written. Approved.

4. No. 1274. Bay closing lines were drawn across Terribone and Timbalier Bays on the theory that the islands are intersected by the mainland closing line and that they are screening islands. Approved.

5. No. 9102. Kotzebue Bay was considered an overlarge bay, between Cape Espenberg and Cape Krusenstern. The fall back 24 mile line was drawn from Espenberg Light to the low tide flats considered to be part of the mainland located in front of Kotzebue Light. Approved.

6. No. 9380. Norton Bay was determined to be an overlarge Bay.

Port Clarence was closed by a line from Point Spenser to the closest point on the opposite shore, in accordance with Strohl's theory. Dr. Hodgson had proposed a line perpendicular to the axis of the bay but this was rejected as not applicable to this situation.

Since this chart includes the Diomedes the question of whether the convention line or the median line is the boundary was raised. Although it was agreed that the disclaimer would protect us, it was determined to wait until the Legal Advisers Office could address itself to this question.

Bearmon Bay was determined to be merely an indentation ignoring Neragon Island. This island screens the indentation and makes it a bay that meets the semicircle test. It was felt that this was distinguishable from Caillou Bay in Louisiana since in that case without the island there would only be a mere curvature of the coast and the islands are necessary to create an indentation by forming one of the sides. A closing line was drawn in this case by using Neragon Island only.

7. No. 9302. This small scale chart fills in gaps in the larger scale charts. The phrase "Continued on Chart _____" will be added at the limits of the used areas as discussed in

paragraph nuber three. The three mile limit is not shown on this chart because it is not discernible at a reduced scale. Approved.

8. No. 9103. Approved.

9. Nos. 9052 and 8802. These were held over pending arrival of Chart No. 9052. The question raised was whether Nushagak Bay could be considered an overlarge bay. Consideration tabled.

10. No. 8834. Approved.

11. No. 8865. Approved.

12. No. 8864. Approved.

A closing line was drawn for the half-moon bay on the east side of Semisopochnoi Bay.

13. No. 8863. Approved.

After consideration of the above-mentioned charts, the meeting was adjourned.

AD HOC COMMITTEE ON DELIMITATION OF UNITED STATES COASTLINE

MINUTES OF NOVEMBER 9, 1970, MEETING

PARTICIPANTS:

Department of State:	Dr. Robert Hodgson William Salisbury
Coast Guard:	Lt. Leo Morchouse
Department of Justice:	George S. Swarth Jonathan I. Charney
National Ocean Survey (N.O.S.):	Robert Kale Lawder James F. Richardson Lt. John Callahan
National Oceanic and Atmospheric Administration (N.O.A.A.):	Rear Admiral Harley D. Nygren Hugh Dolan
Department of the Interior:	Francis Cotter

The Law of the Sea Committee on Delimitation of the U. S. Coastline met on November 9, 1970, at 1:00 p.m. in the office of the Geographer of the Department of State, Dr. Hodgson.

Dr. Hodgson opened the meeting by discussing whether or not it would be appropriate to place a 24 mile fallback line in Bristol Bay in accordance with Article VII, paragraph 5, of the Convention on the Territorial Sea and the Contiguous Zone. He stated that based on Charts 9051 and 9052 there would be no additional water area closed off in the vicinity of Nushagak Bay and Kvichak Bay since they would be considered juridical bays on their own. It was next discussed whether or not it would be appropriate to use a 24 mile line in the vicinity of Walrus Island, Hagemaster Island and Togiak Bay. This led to a discussion of whether or not Bristol Bay could be considered an overlarge bay although it met the semicircle test. Dr. Hodgson pointed out that the size of the mouth was over 140 miles and the configuration of the area was relatively shallow with a depth of penetration a bit over 1:1. This was compared to the configuration of Cook Inlet.

It was finally decided that the area of Walrus Island, Hagemaster Island an Togiak Bay might be closed off. It was decided to see if it met the semicircle test. It was also decided that no fallback line for

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Bristol Bay would be drawn. Dr. Hodgson will complete Chart No. 8802 in accordance with these decisions and present them at the next meeting for discussion.

Dr. Hodgson reported that last week he represented the United States at the boundary negotiations between the Government of Mexico and the United States before the International Boundary Commission. During the discussions the question of the closing line for the Rio Grande River came up. Dr. Hodgson proposed the use of the 45° test that is being used by this Committee. The representatives of the Government of Mexico and the members of the Boundary Commission found it to be reasonable and appropriate. A line drawn in accordance with this formula will be used in the treaty. Dr. Hodgson was asked by the Commission to prepare a report setting out the theory and procedure used in the test. This report will be incorporated into the minutes of the Boundary Commission's meeting as being the rationale for the drawing of the line at the Rio Grande.

Mr. Richardson reported that all of the documents of the northern coast of Alaska had been completed and reviewed, that they were now ready for reproduction, and that almost all of the remainder of the documents of Alaska, the Pacific coast, and the Gulf of Mexico were inked and only awaited Dr. Hodgson's review before they would be ready for reproduction. Mr. Richardson wanted to know how many copies would be needed and who would pay for the cost of reproduction.

It was decided that before the documents went to reproduction they would need the approval of the Law of the Sea Task Force. In order to accomplish this, the final maps would be held in Dr. Hodgson's office and tendered to the members of the Task Force for review. A letter would be sent from Mr. Stevenson, the Legal Adviser of the State Department, informing the members of the Task Force that the documents were available for review and providing for a procedure for approval. This procedure will be followed each time a substantial number of documents are completed. Drafts of the Legal Adviser's letter will be discussed at the next Committee meeting.

The question of the number of copies posed the difficult problem of the extent of distribution of the documents. It was agreed that the only interest that may militate against a broad general distribution could be in the international sphere. Mr. Salisbury agreed to look into this matter and attempt to reach a conclusion before the next meeting. It was pointed out that even if a limited distribution is adopted it would be difficult to keep control of the documents.

The question of financing the reproduction seemed to be closely tied to the question of distribution. It was agreed, on principle, however, that all the interested agencies should contribute to the cost of reproduction and that payment in proportion to distribution may be appropriate.

The meeting then turned to reviewing the charts that Dr. Hodgson had prepared. The following charts were reviewed and the noted action taken:

1. No. 4183. Approved.
2. No. 4182. Approved.
3. No. 4181. Approved.
4. No. 4117. Approved.
5. No. 4116. Approved.
6. No. 4115. Approved.
7. No. 1207. Approved.
8. No. 1208. Approved.
9. No. 1209. Approved.
10. No. 1210. The decision was made that Dr. Hodgson would change the closing line for Narragansit Bay. It was agreed that a small island south of the eastern headland is for all practical purposes part of the mainland. Using that island as the eastern headland the closing line would intersect West Island. The closing line should therefore, be drawn between the natural entrance points of the western headland, West Island and the island just off of the eastern headland. Dr. Hodgson would move the closing line seaward in accordance with these decisions, and submit for approval.
11. No. 1214. Approved.
12. No. 1216. Approved.
13. No. 1219. Approved.

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14. No. [illegible]. Approved.

The next meeting was set for Monday, November 16, 1970, at [illegible] p.m.

The meeting was then adjourned.

AD HOC [illegible]
OF [illegible]

MINUTES OF NOVEMBER 18, 1970, MEETING

PARTICIPANTS:

Department of State:	Myron Nordquist (Legal Adviser's Office) Dr. Robert D. Hodgson (Geographer)
National Oceanic and Atmospheric Administration:	Hugh Dolan
NMFS:	Denton R. Moore
NOS:	J. Richardson Lt. John Callahan
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Transportation:	[illegible]

Mr. Nordquist indicated that the Department of State would supply copies of the documents being prepared by the Committee to foreign governments on an "if asked" basis. There was no objection to distribution to the public in general and so it was agreed that there could be such distribution.

Mr. Richardson supplied the Committee [illegible] costs of the printing of the documents. The estimated costs were as follows:

1,000 copies	$6,[illegible]
500 copies	$5,0[illegible]
100 copies	$4,070

Estimated needs of various agencies for copies of the documents were as follows:

Justice	50
State	200
Transportation	150 (at least)

Other estimates will be received at the next meeting, and a final number will be determined after hearing from all interested agencies. The problems of storage and distribution were discussed but not resolved, and will be discussed again at the next meeting.

The proposed letter to the Under Secretaries or equivalent level individuals of the affected government agencies from the Legal Adviser concerning work of the Committee already completed, which was distributed with the minutes from the last meeting, was reviewed and the final draft prepared (copy attached).

The following charts were reviewed at the meeting:

1. No. 1273. Approved.

2. No. 8892. The Committee reviewed a closing line of 24 miles for Togiak Bay and requested that an oversize bay line be investigated. Consideration tabled.

3. No. 9991. Approved.

4. No. 9992. This chart had been previously reviewed and approved. Approved.

5. No. 1206. Approved.
(Note: The breakwater in Sandy Bay was determined to be an integral part of the harbor works and was used in the boundary determination.)

6. No. 1221. Approved.

7. No. 1227. Approved.

8. No. 1229. See below.

9. No. [illegible]. See below.

10. No. 1232. See below.

11. No. 1233. See below.

Charts 1221, 1227, 1229, 1231-1233 were considered together over the question of whether Pavlof Sound should be closed as one along the outer banks or whether only the two separate bays inside the outer banks should be closed. If a closing line along the outer banks were rejected the closing lines would be drawn from North Point on Sodie Island to Sandy Point and from Camp Point to Bluff Point. A decision could not be reached and these charts were deferred for a later decision.

12. No. 1234. Approved.

13. No. 1235. Approved.

14. No. 1236. Approved.

15. No. 1237. Approved.

16. No. 1238. Approved.

17. No. 1239. Approved.

18. No. 1240. Approved.

19. No. 1241. Approved.

20. No. 1242. Approved.

21. No. 1243. Approved.

22. No. 1244. Approved.

23. No. 1245. Approved.

24. No. 1246. Approved.

25. No. 1247. Approved.

It was decided that the next meeting of the Committee would be held on Wednesday, December 2, 1970, at 1:00 p.m.

AD HOC COMMITTEE ON DELINEATION
OF UNITED STATES COASTLINE

MINUTES OF DECEMBER 2, 1970, MEETING

PARTICIPANTS:

Department of State:	Horace F. Shumwell, Jr. Robert D. Hodgson
Department of Commerce: (NOAA)	Adm. H. D. Nygren Lt. John Callahan J. F. Richardson
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Interior:	Francis A. Cotter

The meeting was commenced at 1:00 p.m. in the Office of the Geographer of the Department of State, Dr. Robert Hodgson.

The Committee reviewed briefly the status of its work to date. Twenty-nine charts had been submitted to the Coast Survey for inking, and it was estimated that the remaining charts could be prepared for transmission within the next two weeks. Note was made, however, that additional time might be required in dealing with the questions of Long Island Sound and Pamlico Sound.

The Chairman suggested that he, Mr. Charney and a representative from the National Ocean Survey (NOS) meet to review the entire set of minutes and prepare them for subsequent distribution if necessary. The Committee agreed to this suggestion.

Various Committee members questioned representatives of NOS on the time which would be required to produce a full or partial set of documents after a request had been made. NOS estimated that approximately one month would be required. The issue was also raised of the possibility of a larger demand for copies than was anticipated when the original estimates were made. The National Ocean Survey indicated that it could take care of additional overrun at a small additional cost and Admiral Nygren stated that the Survey would assume responsibility for distribution, including any overrun.

The question was raised of preparing documents for the Trust Territories and other U. S. possessions which do not have the status of States. The Committee unanimously agreed that it had not been intended that these areas be examined and, consequently, the group would not consider them at this time.

Lt. Cmdr. Kissinger of the Office of the Special Assistant to the Secretary of State for Fisheries and Wildlife joined the meeting and questioned whether the Committee would attempt to make any determinations concerning continental shelf boundaries between the United States and other countries (e.g. the USSR). The Committee informed him that this matter was not within the Committee's province and that it would make no attempt to deal with it.

Lt. Callahan raised the question of the procedure to be followed in revising documents after the Committee's current work had been completed. He commented that NOS has no jurisdiction to make new and binding determinations of jurisdictional boundaries based on newly discovered evidence and would need to be informed as to how it should proceed when such new evidence is available. The Committee agreed that when its final report is prepared, guidance would have to be given to the Survey to prepare for such contingencies. Illustrative of the type of instructions which would have to be given is whether the Survey should submit to the LOS Task Force new information on a case-by-case (or chart-by-chart) basis, or wait until it has gained sufficient information requiring changes in a number of individual documents or a particular (geographical) set.

After the foregoing discussion, the Committee took action on the following charts:

1. No. 1249. Approved.

2. No. 1249. The issue raised here was whether to draw a closing line across Biscayne Bay from Boca Chita Key to Miami Beach, through a chain of screening islands. Key Largo, which is attached to the Florida mainland is separated from Old Rhodes, Elliot and Sand Keys by a channel three-quarters of a mile in breadth. It was decided that there is a well-marked indentation in Biscayne Bay from Palo Alto Key around to Fisher Island and that the screening islands in question intersect the line drawn between the natural entrance points to the bay. Therefore, a line was drawn from Sands Key through Boca Chita Key and the intersecting island of Key Biscayne to the jetty off Fisher Island. Approved.

AD HOC COMMITTEE ON BOUNDARIES
OF UNITED STATES COASTLINE

MINUTES OF MEETING OF DECEMBER 7, 1970

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson Horace F. Shamwell, Jr.
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Commerce:	Robert K. DeLauder James F. Richardson Hugh Dolan
Coast Guard:	Lt. Leo Morehouse

The Committee met at 1:00 p.m. on Monday, December 7, 1970, in the office of Dr. Robert D. Hodgson, the Geographer of the Department of State.

The Committee acted on the following charts:

1. No. 1204. Closing lines were drawn across Muscongus Bay and Johns Bay, and the northeastern part of Saco Bay, shown in full on No. 1205, infra. Approved.

2. No. 1205. A closing line was drawn across Saco Bay. Approved.

3. Nos. 1211, 1213 and 1215, showing respectively Block Island Sound and eastern Long Island Sound; western Long Island Sound; and lower New York Bay, were considered together. They considered whether to rely on the historic claim to Long Island Sound, which would permit closing it by a line along the chain of islands from Orient Point, on Long Island, to Watch Hill Point, Rhode Island, or whether to treat Long Island as essentially part of the mainland, which would permit closing the western part of Block Island Sound as well, by a line north from Montauk Point, Long Island, to Watch Hill Point. Long Island is 118.1 statute miles (102 geographical miles) long, with channels separating its western end from the mainland of 0.53, 0.5⅛, and 0.3 geographical miles. The channels are wide, deep and carry heavy coastwise (but not international) traffic, serving

heavy industrial development along the north shore. The industrial development along the north shore. The question of whether Long Island can be considered part of the mainland was deferred, pending review by the Legal Adviser's Office and a study by Dr. Hodgson, to see if there are comparable situations elsewhere in the world, which might be examined by way of references. The question of how to close lower New York Bay (Chart No. 1215) was also deferred, pending a decision on how to treat Long Island Sound.

4. Nos. 1229 and 1231, showing Albemarle and Pamlico Sounds. At the November 18 meeting, Dr. Hodgson's proposal to treat the outer banks as the coastline had been tentatively rejected, on the ground that they were islands and did not screen a bay. Accordingly, Dr. Hodgson now proposed separate closing lines, from North Point on Bodie Island to Sandy Point, and from Camp Point to Bluff Point, leaving a high seas enclave in Pamlico Sound. On further discussion, it was concluded that the two sounds can be viewed as a two-headed bay, since a single straight line from North Point to Hog Island could enclose them both, following the precedent of the Svaerholthavet in the Anglo-Norwegian Fisheries case. While the distance between the two heads would make this a rather unrealistic view in the absence of the islands, the presence of the outer banks, forming an island screen linking the two sounds, with only very small openings between islands, is believed to justify treating the area as a single bay extended out by the island screen. This will eliminate the high seas enclave. No closing lines were drawn, as closing lines between the islands would not affect the three-mile line. Accordingly, no closing lines were shown. Approved.

5. No. 1233, deferred from November 18 pending reconsideration of the foregoing, required no further consideration, in view of the above decision. (It has no closing lines.) Approved.

Review of the above charts disposes of all coastal areas except Long Island Sound and New York Bay, discussed above.

Dr. Hodgson reported that no Task Force agency has raised any objection to any of the charts made available for their inspection.

Mr. Dolan, on behalf of Lt. Callahan, reported that work is progressing on preparation of a program for continuing revision of the

three- and twelve-mile lines as required by cartographic or legal developments in the future. NOS hopes to be able to submit a proposed program in two weeks. Dr. Hodgson lent Mr. Dolan some charts issued by the Federal Republic of Germany, as samples of how territorial sea limits have been shown on charts of other countries.

It was agreed that Mr. Dolan would represent NOAA on the three-man committee to edit the minutes of past meetings. The committee will meet in Mr. Shamwell's office (room 6420, State Department) on Thursday, December 10, at a time to be set.

Mr. Richardson said that the end of January will be soon enough to advise NOAA of the number of sets desired. Mr. Shamwell is to have prepared a list of agencies, other than those represented on the Task Force, that may be interested in placing orders.

Mr. Shamwell indicated that the Legal Adviser would notify Task Force members when another set of documents is ready to be examined by them. The Committee considered that a shorter time could be allowed for examination of subsequent maps without causing inconvenience to anyone.

The Committee agreed to meet again at 1:00 p.m. on December 21 in Dr. Hodgson's office. Dr. Hodgson indicated that he would be away, but would leave the Long Island documents for the Committee to consider.

The meeting adjourned.

[illegible]
OF UNITED STATES CONSTLINE

MINUTES OF JANUARY 4, 1972, MEETING

PARTICIPANTS:

Department of State:	Bernard Oxman, Assistant Legal Adviser for Ocean Affairs
	Horace F. Shamwell, Legal Adviser's Office, Chairman
	Dr. Robert D. Hodgson, Geographer
Department of Justice:	Jonathan I. Charney
	George S. Swarth
Department of Commerce:	Hugh Dolan
	Robert Lawler
	Henry Pullen
	James F. Richardson
	Lt. John Callahan
Department of the Interior:	Francis A. Cotter
Coast Guard:	Lt. Leo Morehouse

The Committee met in Dr. Hodgson's Office at 1:00 p.m.

The purpose of the meeting was to determine the position with respect to Long Island Sound and New York Bay. Long Island Sound is considered to be the internal waters of the United States. The reasons for this determination are set forth in a letter of April 8, 1969 from the Legal Adviser to the Solicitor General.

For this reason the Committee drew a closing line across Long Island Sound delimiting the area of historic waters. A line was not drawn from Watch Hill Point to Montauk Point because such a line would enclose waters within Block Island Sound which do not qualify for historic treatment.

The Committee gave consideration to the possibility of closing off the entire area discussed above under the theory that it is a legal bay, in accordance with the rules contained in Article 7 of the Geneva

Convention on the Territorial Sea and Contiguous Zone. However, in order for this area to qualify as a legal bay, a prior determination must be made that Long Island constitutes a part of the mainland of the United States. If Long Island is an island, then the area in question does not qualify as a bay.

In order to determine whether or not Long Island could be considered essentially mainland, detailed consideration was given to the geography of the area. Not only was the distance separating Long Island from the mainland discussed, but also the depth of the channels separating it from the mainland and the use that is made of those channels by vessels. It was concluded that Long Island could not be considered part of the mainland based on any of these factors. The Committee then discussed whether or not Long Island could be considered part of the mainland based on the theory that it forms the bank of the East River. The Geographer made a detailed study of this question and consulted other experts in the field. It was his conclusion that he could not consider East River to be an actual river because of its physical characteristics, including the presence of a unique tidal regime. Consequently, the Committee could not conclude that Long Island should be considered as part of the mainland and drew the closing lines indicated on Chart 1211.

These closing lines do not affect the limits of United States contiguous zone because of the presence of offshore islands which determine the delimitation of the 12 mile fishing limit.

New York Bay was closed from Sandy Hook to Rockaway Point based on the fact that there is a juridical bay inside a line from Sandy Hook to Throgs Neck. Since Long Island is crossed by this closing line the closing line will be drawn between Sandy Hook and Rockaway Point.

The following maps were therefore approved:

No. 1211 (35th Ed., August 2, 1969, NM 31/69),
No. 1215 (23rd Ed., July 26, 1969, NM 30/69).

It was concluded at this meeting that the attached list of 155 documents was approved for publication, notwithstanding the fact that certain individual documents were not specifically approved in the minutes.

The meeting then adjourned.

U.S. DEFENSE MAPPING AGENCY

No.	Edition	Edition Date	Revised Print Date
ATLANTIC COAST			
1201	6	12/30/68	
1202	10	1/27/69	
1203	7	10/26/68	
1204	14	12/13/69	
1205	12	12/2/68	
1206	11	3/10/69	
1207	10	7/7/69	
1208	14	7/[illegible]/69	
1209	17	12/20/69	
1210	13	7/[illegible]/69	
1211	15	8/2/69	
1214	8	6/2/69	
1215	23	7/26/69	
1216	13	8/30/69	
1217	22	1/10/70	
1219	23	8/1/70	
1220	16	12/13/69	
1221	14	11/22/69	
1222	29	11/8/69	
1227	8	6/24/68	
1229	15	12/20/69	
1231	16	8/9/69	
1232	16	1/17/70	
1233	15	10/4/69	
1234	10	1/25/69	
1235	8	6/30/69	
1236	6	2/17/69	
1237	4	9/16/68	
1238	5	12/25/67	
1239	9	2/22/69	
1240	8	11/27/67	
1241	7	12/2/68	
1242	9	2/21/70	
1243	8	8/23/69	
1244	4	2/17/69	
1245	7	8/30/69	
1246	5	10/7/68	
1247	4	2/17/69	
1248	10	8/2/69	
1249	9	11/27/67	10/21/68
1250	7	12/11/67	

No.	Edition	Edition Date	Revised Print Date
1251	9	12/20/69	
1252	8	12/4/67	
1253	4	8/21/67	
1254	6	11/25/68	
1255	12	8/23/69	
1256	6	5/13/68	
1257	15	4/11/70	
1258	6	12/13/69	
1259	7	12/13/69	
1260	3	10/1/69	
1261	7	11/22/69	
1262	8	9/21/69	
1263	9	7/1/69	
1264	6	12/20/69	
1265	15	11/1/69	
1266	23	9/6/69	
1267	15	3/1/70	
1268	12	3/14/70	
1270	9	6/20/69	
1272	25	5/15/70	
1273	11	4/10/70	
1274	9	7/1/69	
1275	9	7/25/69	
1276	12	2/27/70	
1277	13	10/25/69	
1278	10	10/22/69	
1279	13	10/4/69	
1280	9	3/10/69	
1282	30	10/4/69	
1283	13	1/6/69	
1284	14	1/28/70	
1285	8	7/8/68	
1286	18	10/22/69	
1287	6	9/23/68	
1288	8	10/10/69	
1351	8	1/15/68	
HAWAII			
4115	8	9/9/63	1/16/67
4116	14	7/1/69	
4117	8	7/15/68	
4181	4	6/23/69	

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4182	3	3/21/70	
4183	4	1/15/68	
PACIFIC COAST			
5101	14	1/31/70	
5202	12	1/15/69	
5302	6	6/1/70	
5402	13	2/14/70	
5502	10	7/1/70	
5602	10	11/22/69	
5702	6	12/11/67	
5802	8	2/10/69	
5902	9	12/4/67	
6002	12	3/4/68	
6102	9	11/11/68	
ALASKA			
8002	10	8/9/69	
8102	11	6/20/70	
8152	7	7/8/68	
8202	15	10/21/68	
8252	4	5/19/69	
8402	3	11/15/69	
8457	3	3/9/54	10/31/66
8502	15	7/15/68	
8513	9	8/9/69	
8552	13	12/30/68	
8553	3	2/17/69	
8554	11	1/22/70	
8556	3	10/23/67	
8802	23	9/21/69	
8833	7	7/16/67	
8834	2	1/13/64	5/1/67
8859	5	4/29/68	
8860	15	2/26/68	
8861	2	3/15/66	12/4/67
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8863	7	5/1/67	
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8865	4	7/29/63	7/29/68
8995	8	6/6/70	

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No.	Edition	Edition Date	Revised Print Date
9051	3	10/17/66	
9052	3	3/24/69	
9103	5	3/7/70	
9302	21	10/30/68	
9370	4	12/27/69	
9380	9	2/14/70	
9402	3	1/20/69	
9450	2	10/7/68	
9451	2	10/7/68	
9452	2	5/13/68	
9453	2	5/13/68	
9454	2	5/13/68	
9455	2	5/13/68	
9456	2	5/13/68	
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9458	2	6/10/68	
9459	3	5/13/68	
9460	3	6/24/68	
9461	3	6/10/68	
9462	3	6/24/68	
9463	3	5/13/68	
9464	3	6/10/68	4/11/70
9465	3	6/10/68	4/18/70
9466	3	6/10/68	5/9/70
9467	3	6/10/68	5/9/70
9468	3	6/24/68	
9469	3	6/10/68	4/11/70
9470	3	8/12/68	2/14/70
9471	3	6/10/68	
9472	3	6/10/68	
9473	3	6/24/68	3/21/70
9474	3	8/12/68	3/21/70
9475	3	8/12/68	
9476	3	8/12/68	
9477	3	8/12/68	
9478	3	8/12/68	

DX HY

The Legal Adviser

MEMORANDUM TO MR. NEUMAN - L/PMD

Bob:

Ellert of the Counsel's office at Commerce called me re the attached. Part of ESSA is coast and geodetic survey. They need policy guidance in order to draw up baseline maps. We have an interest in making sure that the criteria used conform to those of the Geneva Convention. [illegible] of course [illegible] lies inevitably against most of the coastal nations claims etc.

Ellert suggested that the best State representation would be a lawyer familiar with these problems and the geographer.

For your action, I am sending a copy to Bob Hodgson.

Tex

CC: Mr. Hodgson
INR/RSF/GE - Room 8744

Plaintiff's Exhibit 1 to Deposition of Robert Hodgson dated December 9, 1971: Memorandum to Mr. Neuman from Department of State, The Legal Adviser.

Ex 1

THE SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

Honorable William P. Rogers
Secretary of State
Washington, D. C. 20520

Dear Mr. Secretary:

Recently several government agencies have brought to our attention questions of policy and interpretation regarding the boundary demarcation of our offshore domain as shown on charts prepared by the Environmental Science Services Administration. To properly resolve these questions the views of the Departments of Justice, State, Transportation and Commerce are necessary.

This Department, therefore, proposes the immediate establishment of an ad hoc committee composed of representatives of the Departments of State, Justice, Transportation and this Department. This committee would furnish a framework within which the international, jurisdictional and political policy questions pertaining to boundary demarcation could be resolved.

I would appreciate your reaction to this proposal. I am also asking the Attorney General and the Secretary of Transportation for their views.

Sincerely,

Secretary of Commerce

ANALYSIS BRANCH

Plaintiff's Exhibit 1 to Deposition of Robert Hodgson dated December 9, 1971: Letter to William P. Rogers from Secretary of Commerce.

DEPARTMENT OF STATE
Washington, D.C. 20520

DX IC

May 1, 1970

Acted on S/S May 11, 1970

UNCLASSIFIED

MEMORANDUM FOR THE SECRETARY

THROUGH: J - Ambassador Johnson
S/S

FROM: L - John R. Stevenson

SUBJECT: Commerce Department Proposal for Ad Hoc Committee on Demarcation of United States Offshore Boundaries: ACTION MEMORANDUM

By letter dated March 26, 1970, the Secretary of Commerce proposed to you the establishment of an interdepartmental ad hoc committee to review questions posed by several Government agencies relating to the boundary demarcation of the United States offshore domain as shown on charts of the Environmental Science Services Administration (Tab B). The committee would be comprised of representatives of the Departments of State, Justice, Transportation and Commerce. As described in Mr. Stans' letter, it would furnish a framework for the resolution of international, jurisdictional and political policy questions pertaining to boundary demarcations.

The need for this committee stems from the failure of the agencies mentioned above to agree upon a proper interpretation and application of symbols devised by ESSA to designate points along the U.S. coast to be used for the purpose of identifying baselines of the United States. This committee should not, however, become involved in the complex legal and political considerations connected with any change in U.S. policy regarding baselines.

Attached is a proposed response to Mr. Stans' letter approving the proposal to establish a committee for the purposes as outlined, with the understanding

L/PolC, HF Shamwell 5/1/70

Memorandum for the Secretary through Ambassador Johnson, from John R. Stevenson, dated May 1, 1970.

that its functions would be limited as described above, and with the additional recommendation that the committee be set up as an ad hoc committee of the Inter-Agency Task Force on the Law of the Sea. (Tab A)

RECOMMENDATION:

That you sign the letter at Tab A to the Secretary of Commerce.

Attachments:

Tab A - Letter to the Secretary of Commerce
Tab B - Letter from the Secretary of Commerce, March 26, 1970

Clearances:
L/PMO - Mr. Neuman
INR/RSF/GE - Mr. Hodgson
S/FW - Mr. Brittin
U - Mr. Hartman
S/PC - Mr. Hartman

L/PMO:HFShamwell:jah 5/1/70
ext. 22658

DX IC 1

COPIES TO:
L
L/PMO
INR/RSF/GE
PM
S/FW
J
S/S-RF
Microfilm

RSR 1 ES
Attention
Keep this study together.

THE SECRETARY OF STATE
WASHINGTON

S/S 4948

May 13, 1970

Dear Maury:

Your recent letter suggested the establishment of an interdepartmental ad hoc committee to review questions relating to the boundary demarcation of the United States offshore domain as shown on charts of the Environmental Science Services Administration. As I understand the need for such a committee, its purpose would be to gain interagency consensus on the particular means to be employed in identifying the baselines from which the offshore boundaries of the United States can be delineated. I understand that this group would not become involved in the complex legal and political considerations connected with any change in U.S. policy regarding baselines.

I concur in the desirability of establishing a committee along the lines outlined in your letter. I suggest, however, that it would be appropriate to establish it as an ad hoc committee of the Inter-Agency Task Force on the Law of the Sea which has been established to coordinate interagency activities in this field.

I look forward to hearing from you further regarding the implementation of this proposal.

With best personal regards,

Sincerely,

William P. Rogers

The Honorable
Maurice H. Stans,
Secretary of Commerce.

Clearances:
L/PMO - Mr. Neuman
L - Mr. Stevenson
INR/RSF/GE - Mr. Hodgson
PM - Capt. Fros
S/FW - Mr. Brittin

L/PMO:HFShamwell:jah 5/1/70
Revised in S/S-S:HHornblow:dg 5/11/70

MICROFILMED BY S/S: CMS

Letter, William P. Rogers to Maurice H. Stans, Secretary of Commerce, dated May 13, 1970.

IC-1

Pol 33-4 US

DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

S/PC - Mr. Dobbins

For clearance.

Jim Morton
S/S-S

A.H.
I showed this to Capt Meier who had no problems. If it is all right with you I will tell S/S that we clear off on it.
J.H.D.

DX IE 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Washington 25, D. C.

Adopted 7/20/56

NOTICE OF PROPOSED RULE MAKING

With respect to salmon fishing on the high seas of the North Pacific Ocean by United States nationals, a Notice of Proposed Rule Making was signed on June 29 and published in the Federal Register on July 3, 1956. This notice was as set forth below:

TITLE 50 - WILDLIFE
CHAPTER I - FISH AND WILDLIFE SERVICE
DEPARTMENT OF THE INTERIOR
SUBCHAPTER F - ALASKA COMMERCIAL FISHERIES
MISCELLANEOUS AMENDMENTS

NOTICE OF PROPOSED RULE MAKING

Pursuant to Section 4 of the Administrative Procedure Act of June 11, 1946 (5 U.S.C. 1003) notice is hereby given that the Secretary of the Interior, under the authority of the Act of June 18, 1926 (44 Stat. 752; 48 U.S.C. 221 et seq.), as amended, and the Act of August 12, 1954 (68 Stat. 698; 48 U.S.C. 1021 et seq.), on the basis of successful exploratory net fishing for salmon native to Alaska on the high seas of the North Pacific Ocean, and after consultation with the United States section of the International North Pacific Fisheries Commission, proposes to:

1. Add the following section to Part 101:

§ 101.19 Waters of Alaska. For the purpose of these regulations, the term "waters of Alaska" north and west of the International Boundary at Dixon Entrance are defined as including those extending three miles seaward (1) from the coast, (2) from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances, and (3) from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland.

Notice of Proposed Rule Making, United States Department of the Interior, Fish and Wildlife Service, John L. Farley, Director, June 29, 1956.

2. (a) To amend Section 103.1 so as to define the Kotzebue-Yukon-Kuskokwim area to include all waters of Alaska between Point Hope and Cape Nevenham;

(b) To amend Section 104.1 so as to define the Bristol Bay area to include all waters of Alaska in Bristol Bay east of a line from Cape Nevenham to a point 3 statute miles south of Cape Menshikof;

(c) To amend Section 105.1 so as to define the Alaska Peninsula area to include all waters of Alaska from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay;

(d) To amend Section 106.1 so as to define the Aleutian Islands area to include all waters of Alaska in the Aleutian Islands west of, and including, Unimak Pass;

(e) To amend Section 109.1 so as to define the Cook Inlet area to include all waters of Alaska in Cook Inlet north of Cape Douglas and west of Point Gore, including the Barren Islands;

(f) To amend Section 110.1 so as to define the Resurrection Bay area to include all waters of Alaska in the Gulf of Alaska between Point Gore and Cape Fairfield;

(g) To amend Sections 115.1, 116.1, 117.1, 118.1, 119.1, 120.1, 121.1, 122.1, 123.1, and 124.1 so as to define the Southeastern Alaska area to include all waters of Alaska in Southeastern Alaska between Cape Fairweather and Dixon Entrance.

(h) To amend Sections 117.2, 118.2, 119.2, 121.2, 122.2, 123.2, and 124.2 by deleting the words "territorial waters" and substituting in lieu thereof the words "waters of the area."

3. To add a new Part reading as follows:

PART 130 - NORTH PACIFIC AREA

§ 130.1 Definition. The North Pacific Area is defined to include all waters of the North Pacific Ocean and Bering Sea north of Dixon Entrance and east of 175 degrees west longitude, exclusive of the waters of Alaska as defined in Part 101.

§ 130.2 Salmon fishing prohibited, exception. No person or fishing vessel subject to the jurisdiction of the United States shall fish for or take salmon, except by trolling, in the North Pacific Area, as defined in this part.

Interested persons are invited to participate in the proposed rule making by submitting their views, data, or arguments in writing to the Director, Fish and Wildlife Service, Washington 25, D. C., within 15 days from the date of publication of this notice in the Federal Register.

June 29, 1956

Wesley A. D'Ewart
Assistant Secretary of the Interior

John L. Farley
Director

Interior--Duplicating Section, Washington, D. C.

DEPARTMENT OF STATE INSTRUCTION
2336

UNCLASSIFIED
(Security Classification)

DX IE 2

FOR DC USE ONLY

Via Air Pouch 306 March 22, 1957

NO.:

SUBJECT: Minutes of the United States - Canada Conference on the Coordination of Fisheries Regulations at Seattle.

TO: American Embassy, OTTAWA

Please deliver immediately to the appropriate official of the Canadian Government the 30 copies enclosed of the Minutes of the Conference on Coordinated Fisheries Regulations. One hundred copies were requested by Mr. George R. Clark, Deputy Minister of Fisheries. Seventy additional copies are being forward by surface pouch for similar delivery.

Herter, acting

Enclosure:

30 copies of Minutes of Conference.

79

UNCLASSIFIED
(Security Classification)

DRAFTED BY: WFL
[illegible] Looney:[illegible] 3/22/57

APPROVED BY: WFL
Warren F. Looney

CLEARANCES

MAR [illegible] 1957 P.M.

Department of State Instruction 2336, Unclassified, March 22, 1957, To: American Embassy, Ottawa, from Herter, acting, RE: Minutes of the United States Canada Conference on the Coordination of Fisheries Regulations at Seattle

7 1.2

DX IE 3

DEPARTMENT OF STATE

June 7, 1957

To All Recipients of Summary of Proceedings of the Conference on Co-ordination of Fisheries Regulations between Canada and the United States held at Seattle, February 27-28, 1957.

There is enclosed an exchange of letters between the Chairmen of the United States and Canadian delegations at the above conference which constitutes an amendment to the Summary of Proceedings. These letters are: from Mr. Herrington dated April 26, 1957; from Mr. Clark dated May 1, 1957; and from Mr. Clark dated May 31, 1957.

Although the exchange of letters constitutes an amendment of the Summary of Proceedings, it does not in any substantive way change the Summary or the understandings set forth in the Summary. The amendment is merely a clarification and an explanation in detail of an important agreement reached at Seattle namely, that concerning continuing liaison between the Pacific Marine Fisheries Commission (Pacific Coast States) and the Department of Fisheries of Canada.

You may wish to attach these documents to your copy of the Summary of Proceedings.

Sincerely yours,

Warren F. Looney
Deputy Special Assistant
for Fisheries and Wildlife
to the Under Secretary

State, FD.Wash.,D.C.

THIS DOCUMENT MUST BE RETURNED TO THE RM/R CENTRAL FILES

Correspondence regarding, and summary of, Conference on Co-ordination of Fisheries Regulations between Canada and the United States, Seattle, Washington, February 27-28, 1957.

BEST COPY AVAILABLE

CANADA

DEPUTY MINISTER OF FISHERIES

OTTAWA

May 31, 1957

Mr. Wm. C. Herrington
Special Assistant for Fisheries
and Wildlife to the
Under Secretary of State
Department of State
Washington, D. C.

Dear Mr. Herrington:

Please refer to my letter of May 1 in reply to your letter of April 26 on the subject of amendment of the Summary Proceedings of the Seattle Conference on Co-ordination of Fisheries Regulations whereby you were informed that the Under-Secretary of State for External Affairs was being requested to write your Department indicating our acceptance of the suggested amendment.

Upon taking the matter up with the Under-Secretary of State for External Affairs, it was his view that it would perhaps be more appropriate to have the minutes of the meeting corrected by direct communication between the officials under whose supervision the meetings were held and the minutes kept. Upon further thought, we are inclined to agree with this view. Therefore, as suggested in your letter of April 26, 1957, you may consider my letter of May 1, 1957, and this letter, sufficient acceptance of your proposal for amendment of the minutes in the manner indicated in your letter.

Yours very truly,

/S/ G. R. CLARK

G. R. Clark
Deputy Minister

State, FD., Wash.,D.C.

CANADA

DEPUTY MINISTER OF FISHERIES

OTTAWA

May 1, 1957

Mr. Wm. C. Herrington
Special Assistant for Fisheries
and Wildlife to the
Under Secretary of State
Department of State
Washington, D. C.

Dear Mr. Herrington:

I have your letter of April 26 on the subject of amending the Summary Proceedings of the Canada - United States Conference on Co-ordination of Fisheries Regulations held in Seattle, February 27-28, 1957.

We think that the amendment proposed in your letter clarifies the intent of the agreement reached at the Conference. I am therefore requesting the Under-Secretary of State for External Affairs to write your department indicating our acceptance of the suggested amendment. We also agree that the exchange of letters on the subject will be the only required formality.

I am happy indeed to learn that the Conference is well regarded on your side. Our people are also very happy with the results achieved so far. I hope that the practical application of the agreement may justify our efforts in that behalf.

Yours sincerely,

/S/ G. R. CLARK

G. R. Clark
Deputy Minister

State, FD., Wash., D.C.

DEPARTMENT OF STATE

April 26, 1957

Dear Mr. Clark:

I refer to the United States - Canada Conference on Co-ordination of Fisheries Regulations held at Seattle February 27-28, 1957. I am glad to tell you that on this side of the border the Conference is regarded as a successful and fruitful one. I trust it is also so viewed by your people.

The Summary of Proceedings issued subsequent to the Conference is here generally felt to be an accurate abstract of the discussions and agreements. However, there is some feeling that one important agreement is set forth by implication only, and that because of its significance it ought to be described in greater detail.

This agreement was to review and coordinate salmon net gear regulations affecting length, depth, construction and mesh size.

It is suggested that the following amendment to the agreement numbered 12 (Summary of Proceedings, page 8) might clearly give the sense of the Conference agreement, the words underlined constituting the amendment:

"(12) It was agreed to maintain close and continuing liaison between the Pacific Marine Fisheries Commission (Pacific Coast States) and the Department of Fisheries in Canada at the technical and administrative levels for the purpose, inter alia, of reviewing and co-ordinating regulations, including salmon net gear regulations affecting length, depth, construction, and mesh size."

I should appreciate your comments on this amendment. If it should prove satisfactory to you, I suggest that our exchange of letters constitute an Amendment and be distributed to the interested people in our respective countries.

Sincerely yours,

Wm. C. Herrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

The Honorable
George R. Clark,
Deputy Minister of Fisheries,
Department of Fisheries, Ottawa, Canada.

State, FD, Wash.,D.C.

- 1 -

SUMMARY OF PROCEEDINGS

CONFERENCE ON

CO-ORDINATION OF FISHERIES REGULATIONS

BETWEEN

CANADA AND THE UNITED STATES OF AMERICA

SEATTLE, WASHINGTON, FEBRUARY 27-28, 1957

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CONFERENCE ON CO-ORDINATION OF FISHERIES REGULATION

SUMMARY OF PROCEEDINGS

Representatives of Canada and the United States met in Seattle, Washington on February 27 and 28 to discuss co-ordination of specific fisheries regulations for the Pacific area pertaining to offshore salmon net fishing, salmon troll fishing and trawl fishing for petrale sole and black cod.

Mr. G. H. Clark, Deputy Minister of Fisheries, Ottawa, Canada and Mr. W. C. Herrington, Special Assistant to the Under Secretary of State, Washington, D. C., headed the Canadian and United States Delegations respectively. A list of those attending the conference is appended.

Offshore salmon net fishing:

The representatives of both Canada and the United States agreed that development of major offshore salmon net fisheries posed a serious management problem and that regulation of such fishing in the eastern Pacific ocean was essential to the conservation of salmon stocks of North American origin.

The Canadian Delegation stated that Canada was prepared to prohibit her fishermen from taking salmon in offshore waters between 35° and 60° north latitude, except by trolling. For the purpose of this proposed regulation, offshore waters would include the high seas off continental United States and Alaska and the waters seaward of a line joining Bonilla Point and Tatoosh Island at the entrance of the Strait of Juan de Fuca commencing at the point of intersection with the international boundary line; thence northwesterly along the shoreline of Vancouver Island to Cape Beale; thence along a line projected therefrom to Amphitrite Point; thence along the shoreline of Vancouver Island to Cox Point; thence along a line projected therefrom to Lennard Island Light; thence along a line projected therefrom to the westernmost point of Vargas Island; thence along a line projected therefrom to Rafael Point on Flores Island; thence along a line projected therefrom to Estevan Point; thence along a line projected therefrom to Pajo Point; thence along a line projected therefrom to Clerke Point on Brooks Peninsula; thence along a line projected therefrom to Solander Island Light; thence northerly along a line projected therefrom to Lawn Point; thence along a line projected therefrom to Cape Russell; thence along a line projected therefrom to Cape Scott Light; thence easterly along a line projected therefrom to Cape Sutil; thence northerly along a line projected therefrom to Herbert Point on Calvert Island; thence northwesterly along a line projected therefrom to Currie Islet Light; thence along a line projected therefrom to Nab Rock; thence along a line projected therefrom to the southernmost point of the Estevan Islands; thence along a line projected therefrom to Terror Point on Banks Island; thence along a point projected therefrom to Bonilla Island Light; thence northerly along a line projected therefrom to Butterworth Rocks; thence along a line projected therefrom to a position 3 miles west of the northwesterly point of Dixon Island; thence along a line projected therefrom due north to the international boundary line between Canada and Alaska; except the waters along the coast of the

Queen Charlotte Islands inside a line commencing at Langara Island Light and projected easterly therefrom to Shag Rock; thence along a line projected therefrom to Hiat Point; thence along a line projected therefrom to Rose Point; thence southerly along the eastern shoreline of Graham Island to Lawn Point at the entrance to Skidegate Inlet; thence along a line projected therefrom to Gray Point on Moresby Island; thence along a line projected therefrom to Scudder Point on Burnaby Island; thence along a line projected therefrom to Garcin Rocks Light; thence along a line projected therefrom to Pest Point on Kunghit Island; thence along a line projected therefrom to Sr. James Island Light; thence northwesterly along a line projected therefrom to Welcan Fraser Point on Moresby Island; thence along a line projected therefrom to Chads Point; thence along a line projected therefrom to Kitgoro Point; thence along a line projected therefrom to the northwesternmost point of Hippa Island; thence along a line projected therefrom to Tian Head on Graham Island; thence along a line projected therefrom to the northeasternmost point of Frederick Island; and thence northerly to the point of commencement at Langara Island Light.

The Canadian Delegation advised the Conference that the reference points used to describe the proposed line beyond which salmon fishing, except by the use of troll gear, would be prohibited were taken from Canadian Hydrographic Charts No. 3593, 3744 and 3844 and that it might be necessary to adjust the line somewhat in order to describe it adequately for enforcement purposes. Further, such a restriction on offshore salmon fishing could be brought into effect almost immediately if general agreement were reached during the conference.

The United States Delegation stated that:

(1) The Secretary of the Interior now prohibited the taking of salmon by United States nationals in the Pacific Ocean, outside the waters of Alaska, north of Dixon Entrance and east of 175° west longitude, except by means of trolling.

(2) Federal legislation will be sought to extend in time for this season the geographical area of this regulatory power of the Secretary of the Interior as far south as approximately 48°30' north latitude.

(3) The State of Washington was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State seaward of a line commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between Sail Rock in Clallam County and Owen Point at the entrance to Fort San Juan on Vancouver Island; thence southerly along a line projected therefrom through Sail Rock to the shoreline; thence westerly along the state shoreline of the Strait of Juan de Fuca to Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbour; thence southerly along a line projected therefrom to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to Cape Shoalwater Light at the entrance to Willapa Bay; thence southerly along a line projected therefrom to Leadbetter Point; thence southerly along

the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly along a line projected therefrom to the knuckle of the South jetty at the entrance of said river.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(4) The State of Oregon was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State in award of a line commencing at the point of intersection of the California-Oregon state boundary with the Pacific Ocean high water mark shoreline; thence northerly along such high water mark shoreline, including extensions thereof across the waters of the bays or tidal areas of streams emptying into the Pacific Ocean, to the mouth of the Columbia River; thence northerly across the waters of the Columbia River along the line designating and defining the mouth of such river under OCS Bll. 130 to the point of intersection of such line with the Oregon-Washington state boundary.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(5) The State of California was taking action in its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the state and by its citizens in international waters of the Pacific Ocean.

This Bill could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(6) If the State Bills fail of enactment, Federal Government legislation will be sought to secure in time for this season Federal Government regulation in the high seas as far south as required to provide protection for all salmon stocks located in the eastern Pacific Ocean off continental United States.

The lines proposed by the Canadian and United States Delegations were acceptable to the Conference as a whole with the exception of the following specific areas:

(a) The location of the line across the Strait of Juan de Fuca.

(b) The location of certain segments of the line proposed along the west coast of Vancouver Island.

(c) The location of the line described in the Alaska Fishery Regulations.

A sub-committee was appointed to consider and report on the location of the line across the Strait of Juan de Fuca. The United States Delegation requested an opportunity to give further consideration to the location of the line along the west coast of Vancouver Island as proposed by the Canadian Delegation and the Canadian Delegation requested an opportunity to consider the location of the line in Alaska as described in the Alaska Fishery Regulations.

Salmon troll fishing:

The United States Delegation stated that different regulations with regard to open season and size limit applied to the troll fisheries off the coast of continental United States, Canada and Alaska and that in their view, such regulations were necessary to conserve the salmon stocks and thus it would be desirable to have these conform in the respective areas.

The situation with respect to the season applicable to silver or coho salmon was satisfactory since California, Oregon and Washington had adopted a June 15 to October 31 season in 1963, Canada had adopted the same season in 1962 and the Alaska season was somewhat more restrictive extending from July 1 to September 30.

A season for chinook or spring salmon extending from April 15 to October 31 was adopted by the states of Oregon and Washington in 1956 and the season in the state of California is more restrictive extending from May 1 to September 30. The season in Alaska extends from April 15 to October 31 while the closed season in Canadian troll fishing regulations extends from December 1 to January 31 in the following year.

The United States Delegation stated that regulations for the coming season in Southeast Alaska (which is the only area trolled in Alaska) were not yet finalized by publication. There was excellent possibility that the opening date for the chinook or spring salmon would be changed to April 15; however, with 30 days notice required after publication, entry into effect would occur this year some days after March 15.*

The Canadian Delegation stated that the necessary action would be taken to have the Canadian season for the chinook or spring salmon troll fishery changed to April 15 to October 31 and that this would be put into effect before the coming season.

A minimum size limit of 26 inches total length for chinook or spring salmon caught by trolling was adopted by the states of California,

* Editor's note: The change to April 15 for Southeast Alaska was published in the Federal Register on March 6, 1963. See XXII FR 1379. Accordingly, the new regulation became effective April 6, 1963.

Oregon and Washington in 1949 and a slightly larger minimum size limit applies in Alaska since a 26 inch fork length measurement had been adopted. No minimum length for troll-caught chinook or spring salmon has been established in Canada but there is a general prohibition against retention of any salmon weighing less than 3 pounds. Following a general exchange of views on regulation of the salmon troll fisheries the matter was referred to a sub-committee for consideration and report.

Trawl fishing:

The United States Delegation outlined certain recent developments in the otter trawl fisheries which demonstrated in their view the necessity for further restrictions particularly with respect to the fishing season for petrale sole, a minimum size limit for black cod and the mesh size authorized for trawl nets.

After a brief discussion a sub-committee was appointed to give consideration to these particular aspects of the trawl fisheries and to prepare a report for submission to the Conference.

Sub-committee reports:

At the concluding session of the Conference, reports were presented by the chairmen of the sub-committees. After discussion these were accepted and approved by the Conference. The full text of each report is appended.

Major agreements reached:

The following major agreements were reached between the Canadian and United States Delegations during the Conference:

(1) The location of the line delimiting offshore waters as proposed by the Canadian Delegation was appropriate with the following shoreward adjustment on the west coast of Vancouver Island beginning at Rafael Point on Flores Island thence along a line projected therefrom to the light and whistle buoy at the entrance to Refuge Cove; thence along a line projected therefrom to Hesquiat Point; thence westerly along a line projected therefrom to Matlahaw Point; thence following the shoreline to Estevan Point; thence northerly along a line projected therefrom to Escalante Point; thence along a line projected therefrom to Maquinna Point on Nootka Island; thence following the shoreline of Nootka Island to Ferrer Point; thence along a line projected therefrom to the light and whistle buoy at the entrance to Kyuquot Channel; thence along a line projected therefrom to Lookout Island Light; thence along a line projected therefrom to a point at the southwestern entrance to Nasparti Inlet; thence westerly along a line projected therefrom to Clerke Point on Brooks Peninsula;

(2) The location of the line delimiting offshore waters across the entrance to the Strait of Juan de Fuca proposed by the Canadian Delegation, namely the Bonilla Point - Tatoosh Island line, should be adopted provisionally and scientific and statistical studies should be undertaken to determine the composition and migratory movements of the silver or coho salmon stocks on each side of the line in order that the line may be relocated if necessary as a conservation measure based on scientific findings.

In this connection it was understood that the research results would be reviewed within two years by the interested agencies and that interim regulatory action could be taken by the State of Washington and Canada during the two year period if the research results showed that such action was required to conserve the silver or coho salmon stocks;

(3) The location of the remainder of the line delimiting offshore waters as proposed by the United States Delegation was appropriate;

(4) The line described in the Alaska Fishery Regulations was appropriate.

In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the "waters of Alaska" as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible;

(5) All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines whenever experience indicated that an adjustment was required;

(6) A minimum size limit of 26 inches total length, or optionally an equivalent weight limit, was to be applied to all chinook or spring salmon caught by troll gear in offshore waters;

(7) The open season for trolling for chinook or spring salmon was to be established as April 15 to October 31 except in California where the season now is more restrictive.

(8) A uniform minimum size limit for silver or coho salmon caught by troll gear in offshore waters was not required at this time;

(9) A uniform closed season for petrale sole extending from December 20 to April 15 of the following year will be established for the trawl fishery beginning with the coming season.

(10) A maximum incidental catch of 3,000 pounds of petrale sole per trip - not to exceed two trips per month - will be authorized for the Oregon, Washington and British Columbia trawl fisheries and California will take such action as necessary to prevent the use of California ports for the purpose of evading regulations applicable in the northern areas.

(11) All other recommendations presented in the reports of the sub-committees, copies of which are appended, were accepted and it was agreed that the agencies concerned should carry out the several recommended studies as soon as possible.

(12) It was agreed to maintain close and continuing liaison between the Pacific Marine Fisheries Commission and the Department of Fisheries in Canada at the technical and administrative levels.

It was agreed that the draft press release, which had been prepared by the press committee, and the precis of the meeting would be reviewed and approved by the chairmen of the Canadian and United States Delegations. A copy of the press release is appended.

The importance of the research programme agreed to by the two Delegations and designed to determine the proper location of the line delimiting offshore waters at the entrance to the Strait of Juan de Fuca based on scientific study of the silver or coho salmon stocks in the area was pointed out and the Conference expressed the hope that the agencies concerned in Canada and the State of Washington would give this project a high priority both from the standpoint of essential funds and personnel.

The chairmen of the Canadian and United States Delegations expressed thanks to their respective advisory groups and to the technical consultants to the Conference for their contribution to the deliberations.

The Conference closed at 5:20 P.M., February 28, 1957.

 APPENDIX NO. 1

LIST OF THOSE ATTENDING THE CONFERENCE

FROM CANADA:

Delegates:

G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada.

Wm. M. Sprules, Department of Fisheries, Ottawa.

A. J. Whitmore, Department of Fisheries, Vancouver,

C. R. Levelton, Department of Fisheries, Vancouver.

Advisors:

G. T. Brajcich, Fishing Vessel Owners Assn. of British Columbia

J. H. Johnson, Prince Rupert Fishermen's Cooperative Assn. Prince Rupert.

F. Probert, British Columbia Gillnetters
F. Nolley

James D. Foote, Canadian Consul

H. Stevens, United Fishermen and Allied
W. J. Canic, Workers Union

C. Joe, Native Brotherhood of British Columbia.

J. Cameron, International North Pacific Fisheries Commission

R. Nelson, Fishing Association of
D. F. Miller, British Columbia
S. H. Furney,

R. Stanton, Pacific Trollers

D. J. Milne, Fisheries Research Board
K. S. Ketchen, of Canada, Nanaimo
A.W.H. Needler,

J. L. Kask, Fisheries Research Board of Canada, Ottawa.

FROM THE UNITED STATES:

Delegates:

Wm. C. Herrington, Special Assistant to the Under Secretary of State.

Warren F. Looney, Department of State

W. M. Terry, United States Fish &
John T. Gharrett, Wildlife Service.

R. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon.

M. C. James, Director, Oregon Fish Commission

R. S. Croker, Pacific Marine
Eugene D. Bennett, Fisheries Commission,
California.

C. A. Nelson, Puget Sound Gillnetters Assn. Mount Vernon.

J. N. Plancich, Fishermen's Packing Corporation, Anacortes.

N. Mladinich, Purse Seine Vessel Owners Association, Tacoma

M. C. Bell, Acting Director, Washington Dept. of Fisheries

Advisors:

Senator E.A.C. Johnson and
Representative F. P. Belotti, California Legislature

W. O. Riley - all of Pacific Marine Fisheries Commission, California

LIST OF THOSE ATTENDING THE CONFERENCE

FROM THE UNITED STATES:

Advisors:

Senator H. M. Jackson and
Representative C. King, Washington
State Legislature.

Representative W.H. Holmstrom, Chair
and Representative R.G. Elfstrom, mem
Legislative Fish and Game Committee,
Oregon.

F. L. Wright, Pacific Marine Fisher
C. K. Phenicie, Commission, Oregon.

H. J. McCool, Fishermen's Cooperati
R. G. Johnston, Association, Seattle.

H. Lokken, Fishing Vessel Owners
Association, Seattle

N. P. Kuljis, Fishermen's Marketing
Association, Seattle

J. S. Wilkinson, Puget Sound Canners

H. A. O'Neill, Puget Sound Canners
Association of Pacific
Fisheries.

M. Edmunds, Garibaldi, Oregon

J. F. Mijich, Pacific Marine Fisheri
Commission, Seattle.

J. Loman, Puget Sound Gillnetters A

TECHNICAL CONSULTANTS TO THE CONFERENCE:

Robert J. Schoettler, Chairman, International Pacific Salmon Fisheries Commission.

Loyd Royal, Director, International Pacific Salmon Fisheries Commission.

REPORT OF THE SUB-COMMITTEE ON TROLL REGULATIONS

The Committee recommends a 26 inch total length minimum size limit on chinooks in those waters that are considered to be outside waters by the respective jurisdictions. Optional equivalent weight limit would be satisfactory.

In making this recommendation the committee recognizes that biological and practical considerations are both involved and that biological evidence to date from all areas does not indicate that this proposal is essential as a conservation measure. Consequently, the committee recommends further study of the problem.

The committee endorses the principle of setting aside nursery areas for silvers and chinooks for specific time intervals as the necessity is determined by study of local conditions.

The committee considered minimum size limits on silvers and concluded that there is no necessity for uniform size limits at this time.

[illegible] NO. [illegible]

REPORT OF THE SUB-COMMITTEE ON TRAWL REGULATIONS

It is recommended:-

1. That a uniform closed season from December 20 to April 15 for petrale sole be established.

2. That a maximum incidental catch of 3,000 pounds of petrale per trip not to exceed 2 trips per month be permitted in Oregon, Washington and British Columbia. California to take such action as necessary to prevent the use of their ports for the purpose of evading regulations in northern areas.

3. That both countries institute studies looking toward further protection of petrale sole and of the other species taken in the otter trawl fishery in international waters.

4. That both countries institute studies looking toward the establish of uniform trawl mesh sizes so as to eliminate as far as possible catching of undersized fish.

5. That both countries institute studies looking toward the establish of a uniform minimum size for black cod in the two countries.

6. That no recommendation is made on a closed season on black cod as the present season has not demonstrated that it is of value from the standpoint of conservation and for this reason may be abandoned.

7. That the present state of the otter trawl fishery clearly demonstrat the need for procedures which will enable the two countries to collaborate informally in the formulation of regulations which are uniform as far as uniformity is desirable and necessary.

[illegible] NO. [illegible]

REPORT OF THE SUB-COMMITTEE ON THE LOCATION OF THE LINE DELIMITING OFFSHORE WATERS AT THE ENTRANCE TO THE STRAIT OF JUAN DE FUCA

It is recommended that the Bonilla-Tatoosh line be provisionally adopted, provided that scientific investigations and statistical studies be undertaken to develop further knowledge as to the following:

(1) Determination of the composition of the Swiftsure stock of silver or coho salmon compared with that of stocks occurring inside the Bonilla-Tatoosh line east to the Sail Rock-Owen Point line or farther east as might appear necessary and desirable during various summer months.

(2) Evidence of maturity of silver or coho salmon in the study area.

(3) Determination of the timing and extent of eastward migration of feeding silver or coho salmon in the Strait of Juan de Fuca.

Further it is recommended that the necessary research programme be designed to cover a two-year period and that the results of the research be reviewed at the end of that time by the interested agencies in order that the location of the provisionally adopted line may be reconsidered in the light of new knowledge.

It is recommended that the research undertaken be co-ordinated with that of other agencies, particularly with reference to tagging or marking programmes, whenever practicable.

NEWS RELEASE: -

March 1, 1957.

AGREEMENT REACHED ON U.S.-CANADIAN FISHERY REGULATIONS

United States and Canadian conferees today recommended coordinated regulations in the oceanic salmon and certain other fisheries in the Pacific Ocean. Nets in off-shore salmon fishing will not be permitted. The spring or chinook salmon troll fishing season will open not earlier than April 15 and will close October 31. The June 15 opening date on trolling for silvers or cohos will remain unchanged. Troll-caught chinook salmon will be required to be 26 inches minimum length or an equivalent minimum weight. In the petrale sole fishery, a uniform closed season from December 20th to April 15 will be established.

At present Canada does not have seasons for troll-caught chinooks or a minimum length regulation, or a season on petrale sole. The coast states this year have set an April 15 opening date for troll-caught chinook landings, and closed the petrale fishery from February 1 through April 15. Some net fishing for salmon has been carried out on the high seas exterior to the Strait of Juan de Fuca. In 1955 a gill-net fishery in "outside" waters began to develop.

Washington, Oregon and California are moving the needed laws through the current Legislatures. Canada can put into effect by administrative action such regulations as are necessary. It is planned that this coordinated system of regulations will take effect in the three states and Canada in time for the coming fishing seasons. Failure of action in any one of the four jurisdictions may jeopardize the entire program.

The meeting represents a long step forward in securing coordination of regulations to conserve Pacific Coast fisheries. Hitherto, the measures of Washington, Oregon and California have been coordinated through the Pacific Marine Fisheries Commission. The recommendations of the conference when approved by the Legislatures and administrative action taken by Canada will mean that regulations along the entire Pacific Coast will be coordinated.

The meetings, which were held in the Salmon Bay Regional Office of the Washington Department of Fisheries, were attended by officials from Washington, D. C., Ottawa, members of the Legislatures and officials of the Pacific Coast states, as well as commissioners of the Pacific Marine Fisheries Commission and advisors from industry.

The recent growth of net salmon fishery threatened existing United States and Canadian salmon conservation programs. Such fishing already is forbidden in waters off the coast of Alaska by order of the Secretary of the Interior.

The conference also took note of a special problem which exists in the area adjacent to the Bonilla Point-Tatoosh Island line at the entrance to the Strait of Juan de Fuca, and agreed that mutual scientific studies would be inaugurated by Canada and the State of Washington in these waters.

Finally, arrangements on procedures for continued international review of coordinated regulations were reached.

In attendance were Canadian Delegates G. R. Clark, Deputy Minister of Fisheries, Ottawa; Wm. M. Sprules, Department of Fisheries, Ottawa; and from the Department of Fisheries, Vancouver, B. C., A. J. Whitmore and C. R. Levelton.

Canadian Advisors were George T. Brajcich, Fishing Vessel Owners Association of British Columbia; John H. Johnson, Prince Rupert Fishermen's Cooperative Association at Prince Rupert; F. Probert and F. Rolley of British Columbia Gillnetters; James D. Foote, Canadian Consul; Homer Stevens and Mike J. Canic of United Fishermen and Allied Workers Union; Clarence Joe, Native Brotherhood of British Columbia; J. Cameron, International North Pacific Fisheries Commission; H. Nelson, D. F. Miller and S. R. Furney of Fishing Association of British Columbia; H. Stanton of Pacific Trollers; D. J. Milne, K. S. Ketchen and A. W. H. Needler, Fisheries Research Board of Canada, Nanaimo; and J. L. Kask, Fisheries Research Board of Canada, Ottawa.

The United States Delegates were Wm. G. Herrington, Special Assistant to the Under Secretary of State; Warren F. Looney, Department of State; W. M. Terry and John T. Gharrett of United States Fish and Wildlife Service; M. C. Jones, Director, Oregon Fish Commission; R. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon; Richard S. Croker and Eugene D. Bennett of Pacific Marine Fisheries Commission, California; Carl A. Nelson, Puget Sound Gillnetters Association, Mount Vernon; John N. Pianich, Fishermen's Packing Corporation, Anacortes; Nick Gladinich, Purse Seine Vessel Owners Association, Tacoma; and Mile C. Bell, Acting Director, Washington Department of Fisheries.

United States Advisors were Senator H. A. C. Johnson, Representative P. P. Pelotti, California Legislature, and W. O. Riley, all of Pacific Marine Fisheries Commission, California; Senator H. N. "Barney" Jackson and Representative Chet King of the Washington State Legislature; Representative Wm. F. Holmstrom, Chairman and Representative Robert G. Klistron, member of Legislative Fish and Game Committee, Oregon; Floyd L. Wright and Charles K. Thomicle of Pacific Marine Fisheries Commission, Oregon; H. J. McCool and Bert C. Johnston, Fishermen's Cooperative Association, Seattle; Harold Lokken, Fishing Vessel Owners Association, Seattle; J. Lonan, Puget Sound Gillnetters Association; Nick P. Kuljis, Fishermen's Marketing Association, Seattle; John S. Wilkinson, Puget Sound Canners; Harold A. O'Neill, Puget Sound Salmon Canners, Inc., Association of Pacific Fisheries; Mark Edwards of Garibaldi, Oregon; and Joseph T. Mijich, Pacific Marine Fisheries Commission, Seattle.

Attending as observers were Loyd A. Royal of New Westminster, B. C and Robert J. Schoettler, Seattle, both representing International Pacific Salmon Fisheries Commission.

State--FD--Wash.D.C.

[illegible]

[illegible]

[illegible]

Dear Mr. [illegible]:

[illegible]

In reading over the [illegible] above [illegible], I note that [illegible] reference [illegible] to [illegible] showing the definitive lines of the [illegible] of the waters of Alaska.

In order to complete [illegible] appreciate [illegible] possible, [illegible] also [illegible] [illegible] our part required to complete the agreement.

Yours very truly,

G. L. Clark
Deputy Minister

DX IE 5

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Wm. C. Herrington

DATE: August 29, 1957

FROM : Warren F. Looney WFL

SUBJECT: F&WS Charts of Waters of Alaska for transmittal to Canada

From the attached memorandum from Mr. Suomela of August 27 you will see that the charts are here and ready for transmittal.

However, I call your attention to the rather unfortunate title of the overlays, the "Proposed Base Line from which to Measure the Three-Mile Limit for Fishery Regulations".

Memorandums, Warren F. Looney to Wm. C. Herrington, August 29, 1957; September 6, 1957.

Mr. Herrington September 6, 1957

Mr. Looney

Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

This, however, is not only an irrational way of giving a chart to a foreign country but it does not answer Clark's request. Clark's request (attached) is for "a chart showing the definitive lines of the seaward limits of the waters of Alaska". Our request of Fish and Wildlife Service was precisely the same.

It appears that there will be considerable work in correcting these charts in almost any way. Since considerable time has passed and Clark is apparently eager to get them, I suggest we sit down and figure out the most expeditious way we can rectify this.

Enclosure:

Correspondence re charts.

U/FW:rFLooney:aa

3447

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Herrington DATE: September 6, 1957

FROM : Mr. Looney WFL

SUBJECT: Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

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Enclosure:

Correspondence re charts.

U/FW:rFLooney:aa

DX IE 7

FOREIGN SERVICE DESPATCH

611.0426/10-

EMBASSY OTTAWA

341

THE DEPARTMENT OF STATE, WASHINGTON.

October 8, 1958

Department's A-90, September 27, 1957. OCT 9 - 1958

SUBJECT: OCCURRENCE OF CANADIAN ENFORCEMENT OF FISHERIES REGARDING REGULATION OF FISHING OFF ALASKA.

The Department's A-90 of September 27, 1957 requested the Embassy to forward to Mr. G. H. Clark, Deputy Minister of the Canadian Department of Fisheries, copies of certain legislation, regulations and charts relating to the regulation of salmon fishing in the North Pacific:

1. Public Law 85-114, approved July 24, 1957,

2. Regulations issued by the Secretary of the Interior on July 25, 1957, and

3. Charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based.

Enclosed is a copy of a self-explanatory letter dated October 7, 1958, which the Embassy received from the Department of External Affairs expressing the desire of the Canadian Department of Fisheries to have a discussion at the earliest opportunity with appropriate United States officials as to the question of the American offshore fishing off Alaska.

Action Requested: The Department is requested to supply the Embassy with any comment on which a reply may be based to the Department of External Affairs for the Department of Fisheries.

FOR THE CHARGE D'AFFAIRES A.I.:

Dolmar R. Carlson
Second Secretary of Embassy

Enclosure:
Copy of letter dated October 7, 1958.

cc: BNA

DRCarlson/mm

UNCLASSIFIED

ACTION COPY — DEPARTMENT OF STATE

The action office must return this [illegible] to DC/R Files with an endorsement of action taken.

IE-7

Foreign Service Despatch, Embassy Ottawa, from Dolmar R. Carlson, Second Secretary of Embassy, dated October 8, 1958.

DX IE 8

[illegible]

SUBJECT: Proposed Canadian Discussions of North Pacific [illegible]

TO: The American Embassy, OTTAWA

The Embassy's Despatch No. 341 of October 8, 1958, forwarded a letter from the Department of External Affairs expressing the desire to discuss with United States officials the question of American off-shore fishing, especially in connection with the alleged seizure of the Miss Dellwood off-shore vessel [illegible] of the Puca.

The Embassy is requested to acknowledge the receipt of the Department of External Affairs letter, state that the matter will be given consideration by the interested [illegible] of the Government and that a further reply will be forwarded [illegible].

DRAFTED BY: [illegible]

CLEARANCES:

[illegible]

[illegible] (Interior)
Mr. Wright (Mine)

Department of State Instruction 2808, Unclassified, TO: The American Embassy, Ottawa, from Dulles dated October 31, 1958.

DX IE 9

DEPARTMENT OF STATE INSTRUCTION 1136

UNCLASSIFIED
(Security Classification)

FOR DC USE ONLY

NO.: A - 293, January 16, 1959

SUBJECT: Reply to Canadian Government Regarding Proposed Discussions on Pacific Coast Fishery Matters

611.426/10-858

TO: The American Embassy, OTTAWA

Reference is made to the Embassy's Despatch No. 341 of October 8, 1958 and to the Department's A-129 of October 31, 1958 regarding the Canadian desire to discuss with United States officials the location of Alaskan off-shore fishing boundaries, possibly in connection with discussion of the lines delimiting off-shore waters across the Strait of Juan de Fuca. The Embassy is requested to prepare and forward to the Department of External Affairs, in reply to its letter of October 7, 1958, an appropriate communication incorporating the substance of the following:

"The United States Government is quite agreeable to the Canadian Government's suggestion that discussions be held between representatives of the two Governments regarding the location of certain Alaskan off-shore fishing boundaries. The United States also agrees that a convenient occasion for such discussions would be afforded by a meeting early in 1959 to review the results of research and to reconsider in the light of scientific findings the lines delimiting off-shore waters across the Strait of Juan de Fuca (Bonilla Point - Tatoosh Island line). It is recognized that the Conference on Coordination of Fisheries Regulations between Canada and the United States, held in February 1957, made provision for such a review at the end of two years.

"In addition to these two matters, however, it would appear that such a meeting would provide the opportunity for profitable consideration of other Pacific Coast fisheries questions of mutual interest to the two Governments. Specifically, the United States would desire to have the meeting consider, as a continuation of the work of the 1957 Conference on Coordination of Fisheries Regulations, the situation with respect to salmon troll fishing. In addition, it is proposed that the occasion be used for an exchange of views regarding the heavy run of Fraser River sockeye salmon through Johnstone Strait in 1958 and the substantial catch in that area, and the effect of such developments on the operations of the

International

UNCLASSIFIED
(Security Classification)

DRAFTED BY: U/FW:Blow:jj 1/13/59 | APPROVED BY: William C. Herrington

CLEARANCES: ENA | S/S | L/T | L/EUR | FWS (Interior) | L/SF

Department of State Instruction 1136, Unclassified, To: The American Embassy, Ottawa, from Dulles, dated January 16, 1959.

UNCLASSIFIED
(Security Classification)

International North Pacific Salmon Commission under the Sockeye Salmon Convention and on the division of the catch.

"The United States suggests that a conference to consider the four questions mentioned might be held at Seattle, Washington from March 24 through March 27, 1959."

"It is hoped that the suggested time and place of the conference, as well as the proposed additions to the agenda, will meet the approval of the Canadian Government."

DULLES

UNCLASSIFIED
(Security Classification)

(Copy - Original Illegible)

DX IE 10

December 29, 1959

Dear Mr. Clark:

Thank you for your letter of December 8, 1959 regarding the Summary of Proceedings of the Second Conference on Coordination of Fisheries Regulations between Canada and the United States held in Vancouver, B. C. April 21-24, 1959.

We received some days ago the package containing 150 copies of this document. The content of the document is quite acceptable to us, and for our part there are no changes which need be made.

Sincerely yours,

Wm. C. Harrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

Mr. G. R. Clark,
Deputy Minister of Fisheries,
Department of Fisheries,
Ottawa, Canada.

Clearances: BNA F&WS(Interior)
Mr. Terry
U/FW:SBlow:jd 12/23/59.

Letter, Wm. C. Harrington to G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada, - December 29, 1959.

(Copy - Original Illegible)

DX II

S
ACTION
is assigned to
U/FW

THE SECRETARY OF THE INTERIOR
WASHINGTON

April 25, 1962

Dear Dean:

I know you share my concern that incidents such as the recent dispute between the State of Alaska and Japanese fishermen in the Shelikof Straits might jeopardize our friendly relations with the Japanese people and their government. One of the ironical things about this conflict is that if the logical development occurs Alaska should become the principal source of raw materials for Japan.

I am convinced that the best way to avoid a repetition of this incident is for the United States to formulate a position soundly based on law and to communicate it to Japan and to the Governor of Alaska. It would be my thought that the President might direct your Department and my own to work jointly to ascertain the pertinent facts and define such international waters as may exist in the Alaskan Archipelago.

Handled properly, this should prevent further disputes of this kind, particularly if we were to take the further step of urging the government of Japan to advise us in advance when Japanese fishing fleets plan to enter such straits and to inform us concerning the duration and purpose of their fishing missions.

On the basis of my insights into the political situation in Alaska, it is clearly predictable that further incidents will occur unless we act.

Sincerely,

Secretary of the Interior

Honorable Dean Rusk
The Secretary of State
Washington, D. C.

(2) 405145

4-26-62

894.245/4-2562

XR 711.022

Letter, Secretary of the Interior to Dean Rusk, Secretary of State, dated April 25, 1962.

BEST COPY AVAILABLE

(21)

s/s. 6715

RM/R

FILE

May 5 1962

Dear Bob:

894.245/4-1862

Many thanks for your letter of April 18 transmitting a translation of a Japanese newspaper article on fishing for herring in the area of the Shelikof Strait.

We intend to remain in close and continuing communication with Governor Egan and the Alaska delegation in Congress regarding the problem raised by the Japanese fishing operation in Shelikof Strait as well as the whole range of fisheries matters which are of concern both to the State and the Federal Government.

This is particularly important with regard not only to the issue of internal waters, but also to the future of the North Pacific Fisheries Convention. It is this Convention which governs the activities of Japan and other countries in fishing North Pacific waters. Two years ago, by agreement of the parties to this convention, herring was removed from the list governed by restrictions under this treaty, since it was considered not to qualify for application of the "abstention" principle. In other words, the herring stock was not considered to be fully utilized, and there were not in force programs of herring conservation which would be disturbed by additional fishing for herring.

The Convention now regulates through restrictions fishing of the commercially important salmon and halibut in the North Pacific. Although the Convention is of indefinite duration, it is subject to termination by any party after an initial period of ten years. That period expires in June 1963. In the next year, therefore, we may be faced with renegotiation should some member feel that its interests would be served thereby.

I know

The Honorable
E. L. Bartlett,
United States Senate.

(1)

L: LC Meeker
U: GSpringsteen : jcd

894.245/4-1862

Letter, George W. Ball, Acting Secretary, to E. L. Bartlett, dated May 5, 1962.

- 2 -

I know that you as well as Governor Egan will wish to follow closely developments affecting the life of this Convention, and we will seek to keep you advised.

Yours ever,

/s/ George W. Ball

Acting Secretary

S/S-RO

A true copy of [illegible]

L:LCMeeker
U:GSpringsteen:jcd
4/25/62
Retyped in S/S-Sarah
5/5 (page two only)

(For initials see attached blue)

United States Senate
COMMITTEE ON COMMERCE

ACTION
is assigned to

April 18, 1962

Honorable George W. Ball
Under Secretary of State
Washington 25, D. C.

Dear Mr. Secretary:

Attached is copy of a news article which appeared in a Tokyo newspaper on April 5, which I know you will find most interesting. As noted at the top of this copy, the article was translated at Kodiak, Alaska.

I wish to call to your attention particularly the third paragraph of the story in which it is stated that one purpose the Japanese government had in sending this fleet into Shelikof Strait was to establish historical fishing rights there.

Sincerely yours,

E. L. Bartlett

LEGAL ADVISER
To Dorothy Bartlett
APR 19 1962
L. L. C. Marsh File
DEPARTMENT OF STATE

484660

APR 20 1962

Letter, E. L. Bartlett to George W. Ball, dated April 18, 1962, with attachment: Copy of a news article, Tokyo Newspaper.

Translated at Kodiak, Alaska, from Japanese newspaper.

NEWS CONCERNING DEVELOPMENTS IN THE JAPANESE FISHING INSURANCE JAPANESE FISHING FOR HERRING IN SHELIKOF STRAIT

Kodiak, April 5, 1962. SUISAN KEIZAI SHIMBUN, April 5, reports that a Japanese fishing fleet has begun to fish for herring in the waters south of the Alaska Peninsula. This information was made public by the Japanese Fisheries Agency on April 4. The Japanese fleet is identified as the No. 31 Banshu Maru fleet operated by the Eastern Pacific Fisheries Company which is affiliated with the Tayo Fishing Company.

According to the SUISAN KEIZAI SHIMBUN, the Banshu Maru fleet consisting of a mother ship, "Banshu Maru", 15,000 gross tons and four fishing vessels, two of which are purse seine vessels, are fishing for mature herring in the Shelikof Strait, which lies between Kodiak Island and the Alaska Peninsula. Production objective of the fleet is 3,000 metric tons of highly prized herring roe, of which there is a tremendous shortage. Price of this product in Japan is quoted at $2,776,070 per metric ton in United States dollars.

Japan is keeping close tab on the reaction of the United States and Canada to this experimental fishing operation inasmuch as Japanese fishing operations south of the Alaska Peninsula are the subject of great controversy within the International North Pacific Fisheries Commission. Reportedly, the Fisheries Agency plans to gradually authorize other Japanese firms to operate herring fleets should the experimental fishing being conducted by the Banshu Maru [illegible] prove successful, one purpose being to establish historical rights. Also, the Agency plans to give careful consideration to the condition of fish stocks and to international developments in authorizing additional operations in these waters.

Alaska state authorities are reported to have undertaken an investigation to determine if there has been a violation of American territorial waters, and American fishermen in the Kodiak area are reported to be greatly disturbed over the Japanese operations. However, Japan takes the view that the Shelikof Strait at its narrowest point is 23 miles wide, the average being

-2-

about 30 miles, and that Japanese operations can be conducted in that area without violating American territorial waters. Also, herring has been taken off the list of fish stocks qualifying for abstention. Furthermore, halibut cannot be taken incidentally to herring since purse seines are being used to catch the mature herring. However, the herring migrate into shore to spawn and so Japanese fishing vessels are fishing close to shore. American fishermen will likely become excited to find foreign fishing vessels fishing off their coast and Japan will face the problem of making the United States understand the situation.

• • • • •

INCOMING TELEGRAM **Department of State** PERMANENT RECORD COPY

33-L
Action

UNCLASSIFIED

Control 19777
Rec'd: MAY 27, 962
12:22 AM

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Info

FROM: CCGDSEVENTEEN

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TO: Secretary of State

NO: 270126Z MAY (COAST GUARD MESSAGE)

PRIORITY

ACTION COMDT COGARD, INFORMATION COMWESTARE, COMALSEAFRON, COAIRDET KODIAK, DEPARTMENT OF JUSTIC, CNO, BUREAU OF COMMERCIAL FISHERIES, STATE DEPARTMENT.

RMR

TO CCS

1. THE FOLLOWING TELEGRAMS ARE QUOTED FOR YOUR INFORMATION AND FOR DISSEMINATION TO THE U.S. DEPARTMENT OF STATE. COPIES OF THESE TELEGRAMS WERE RECEIVED FROM THE GOVERNOR OF ALASKA.

2. THE FIRST TELEGRAM IS FROM THE JAPANESE VESSEL BANSHU MARU NO 31. QUOTE. THE HONORABLE WILLIAM A EGAN GOVERNOR OF ALASKA JUNEAU ALASKA. SINCE REACHING FISHING GROUNDS ON MARCH 24 WE HAVE CONTINUED OPERATION IN FACE OF INSURMOUNTABLE ODDS BUT WITHOUT ANY CATCH WHATEVER TO DATE STOP KNOWING WHAT HUGE LOSS THE COMPANY WILL INCUR FROM SUCH COMPLETE FAILURE OF OUR EXPEDITION HOW CAN WE AS FISHERMEN GO HOME WITH ALL BOATS EMPTY STOP ACCORDING TO SPAWN INSIDE SHELIKOF STRAIT STOP HERRING WITH ROE BEING OF SOLE OBJECTIVE WE REQUEST YOUR SPECIAL DISPENSATION PERMITTING US TO OPERATE WITHIN SHELIKOF STRAIT FOR PERIOD OF THREE WEEKS. BANSHU MARU 31 FISHING FLEET COMMANDER YAMAKI HISAO. UNQUOTE.

3. THE SECOND TELEGRAM IS THE GOVERNOR'S REPLY. QUOTE. BANSHU MARU NUMBER 31 ATTENTION FISHING FLEET COMMANDER. THANK YOU FOR YOUR RADIOGRAM. REGRET THAT IT IS IMPOSSIBLE

Treasury Dept. 270126Z

894.245/5-2762

UFW
MAY 28 1962

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ACTION ASSIGNED TO	ACTION TAKEN None	
NAME OF OFFICER & OFFICE SYMBOL UFW - Blow	DATE OF ACTION 5/28/62	DIRECTIONS TO RM/R File

Telegram, Addressed to Secretary of State, dated May 27, 1962.

UNCLASSIFIED

-2- 270126Z MAY (COAST GUARD MESSAGE) FROM CCGDSEV. TEEN

FOR ME TO GRANT PERMISSION FOR YOUR FLEET TO FISH IN ALASKA WATERS. THE CASE IS BEFORE THE STATE SUPERIOR COURT BUT EVEN IF SUCH WERE NOT TRUE, I COULD NOT GRANT SUCH AUTHORITY TO UNLICENSED FISHERMEN AND FOR THE USE OF UNLICENSED GEAR. THE SHELIKOF WATERS ARE INLAND WATERS OF THE UNITED STATES AND ALASKA. THE HISTORIC USE AND THE HISTORIC REGULATORY RECORDS SPEAK FOR THEMSELVES. IT IS UNDOUBTEDLY TRUE THAT YOUR COMPANY WILL INCUR CONSIDERABLE FINANCIAL LOSS BECAUSE OF THEIR UNFORTUNATE PLANS TO CONDUCT A FISHERY IN ALASKA WATERS BUT IF THE STATE OF ALASKA PERMITTED DISCRIMINATION YOU REQUEST, THE EVENTUAL RESULT COULD VERY WELL BRING ECONOMIC CATASTROPHE FOR ALASKA'S GROWING SEA PRODUCTS INDUSTRY AND A DIMINISHING OF ALL CATEGORIES OF FISHERIES RESOURCES TO THE POINT WHERE THESE VALUABLE RESOURCES WOULD BE NON-EXISTENT. THE STATE OF ALASKA BEARS NO ILL WILL TOWARD THE OFFICERS AND FISHERMEN OF YOUR FLEET AND THE STATE OF ALASKA ALSO SHARES THE RESPECT AND ADMIRATION WHICH OUR UNITED STATES GOVERNMENT HAS FOR YOUR NATION. THE STATE OF ALASKA MERELY URGES THAT YOUR FISHING COMPANIES USE REASONABLE DISCRETION AS TO LOCATIONS OF NORTH PACIFIC FISHERIES EFFORTS. AS GOVERNOR, I WANT TO EXPRESS MY APPRECIATION OF THE CONVINCING ATTENTION AND KINDNESSES YOUR PEOPLE EXTENDED TO SERGEANT WILLIAMS OF THE ALASKA STATE POLICE AFTER SERGEANT WILLIAMS BROKE HIS LEG BOARDING ONE OF YOUR VESSELS. WILLIAM A EGAN GOVERNOR OF ALASKA. UNQUOTE.

NOTE: Mr. Sullivan (CNW) & PE informed 5/27/62 CWO-JRL.

UNCLASSIFIED

DEPARTMENT OF STATE
THE LEGAL ADVISER

May 29, 1962

MEMORANDUM

TO: EA - Mr. Leonard L. Bacon

FROM: L/SFP - Raymund T. Yingling

As you are aware, the note of May 3, 1962, from the Japanese Embassy, protesting the seizure of Japanese fishing boats off the coast of Alaska, has not been answered. Although this office does not appear to have the original of the note, it is assumed, in view of its subject matter, that the answer should be prepared here. This we are prepared to do provided your office sees no objection from a policy standpoint. While there was probably some virtue in permitting the matter to quiet down before a reply was sent, we do not think that a reply can be deferred indefinitely and, therefore, unless we hear to the contrary from you, I will proceed to draft a reply along the following general lines.

1) Shelikof Strait.

Concerning the status of Shelikof Strait, the note will indicate that this Government does not regard it as an inland waterway on historic grounds but considers that the waters of this Strait outside the three-mile belt along the mainland and around Kodiak Island are high seas.

2) Closing line of bays.

The note will indicate that in view of its ratification of the Convention on the Territorial Sea and the Contiguous Zone, this Government no longer follows the ten-mile rule but regards closing lines up to a limit of twenty-four miles as legal.

3) Position of vessels.

While the Department agrees that seizure of the Japanese fishing vessels on the high seas would not have been warranted, the matter of their seizure is before the courts of Alaska, and the Department does not consider it proper to take a position as to whether the vessels were seized on the high seas or within the jurisdiction of Alaska until the courts have acted. However, on the basis of information presently available, it appears that the vessels may have been within territorial waters.

4)

Memorandum, Raymond T. Yingling to Leonard L. Bacon, dated May 29, 1962

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- 2 -

4) Binding effect of agreement between Alaska and East Pacific Fisheries Company.

The Department agrees that this agreement does not commit the Government of Japan as to future fishing activities of Japanese nationals.

5) Extent of territorial sea.

The Department agrees with the Government of Japan that the extent of the territorial sea is a question of international law and not for unilateral determination of coastal State. Since both the United States and Japan adhere to the three-mile limit, there is no difference of view as to the breadth of the territorial sea.

L:L/SFP:RTYingling:edk

The Secretary of State presents his compliments to His Excellency the Ambassador of Japan and has the honor to refer to the latter's note P-30 of May 3, 1962, concerning the recent incident involving Japanese fishing boats in the Shelikof Strait between the Alaska Peninsula and Kodiak Island.

As the Government of Japan is aware, the matter of the seizure of the Japanese fishing boats is now before the courts of the State of Alaska. The Department agrees that the jurisdiction of those courts depends on whether, under international law, the vessels were seized on the high seas or within the territorial jurisdiction of the State of Alaska. A decision on this point necessarily involves determination of questions of fact as well as of law, that is, the precise positions of the vessels when seized, as well as the interpretation of the provisions and rules of law applicable to the facts of the case. On the information presently available to the Department, it appears that the vessels may have been within the State's territorial waters. But until the courts have acted to establish the facts, the Department does not consider it proper to take/

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Department of State statement, dated June 19, 1962.

to take a position as to whether the vessels were seized within the jurisdiction of the State of Alaska, or on the high seas.

The points raised in the various numbered paragraphs of His Excellency's note are under study in the appropriate departments of the Government of the United States, but in view of the considerations noted above, it is desired to respond to them at a later time.

Department of State,

Washington, June 19, 1962

FE:EA:LLB:con:jp:6/13/62

Clearances: L - Mr. Yingling
EA - Mr. Yager
FE - Mr. Rice
Interior - Mr. Terry (draft)

U/FW - Mr. Herrington (draft)
O - Mr. Johnson

S/S C
JUN 15 1962
JUN 18 1962

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WASHINGTON 25, D. C.

U/FW
SEP 12 1962

September 7, 1962.

Mr. William C. Herrington
Special Assistant for Fisheries and
Wildlife to the Under Secretary
Department of State
Washington 25, D. C.

Dear Mr. Herrington:

I have reviewed the report on the statement made by Mr. Ito at the meeting of the North Pacific Fisheries Commission with respect to Shelikof Strait, which you transmitted with your memorandum of August 22, and I have no corrections, additions, or deletions to offer.

Sincerely yours,

Clarence F. Pautzke
U. S. Commissioner
International North Pacific Fisheries
Commission

Letter, Clarence F. Pautzke, U. S. Commissioner, to William C. Herrington, dated September 7, 1962, with attachment: Meeting of International North Pacific Fisheries Commission, Honolulu, August 16, 1962.

CONFIDENTIAL

Meeting of International North Pacific Fisheries Commission
Honolulu, August 16, 1962

Mr. Ito, Director of the Fishery Agency of Japan, made the following statement in substance directed to the U.S. Government members of the Commission:

The Japanese Government greatly regrets the incident developing from the arrest of Japanese fishing boats in Shelikof Strait. The Japanese Government has attempted to cooperate with the Governments of the United States and Canada in the handling of North Pacific fisheries problems and feels that incidents such as this are not consistent with that cooperation.

The stocks of herring off the United States coast of the Gulf of Alaska were removed from the abstention list May 24, 1961. Following this Japanese fishermen were licensed to fish herring in this area; then occurred the unfortunate incident. If these vessels violated the territorial waters of the United States the Japanese Government will convey its apologies and will take appropriate action to impose penalties. However, if it is found that the boats were outside United States territorial waters then the Japanese Government will ask for compensation for all losses involved.

The Japanese Government is convinced that the incident was on the high seas and that the waters of Shelikof Strait are high seas. The Japanese Government knows that vessels of the USSR have operated in the same Strait. The Japanese Government and the Japanese people ask the United States Government to take quick action in resolving the matter.

Mr. Herrington replied that the problem to which Mr. Ito referred now was the subject of an exchange of notes between his Government and the Government of Japan; therefore he could add little more than had already been said. In the United States our State Governments have jurisdiction over fishing in United States waters off their coasts. Consequently, if the Japanese boats were within such jurisdictional waters the State of Alaska had authority to enforce the laws in this area. The important consideration in the case was the exact location of the vessels when they were arrested and this matter is being determined.

Mr. Ito

Mr. Ito again pressed the matter, particularly requesting that action be expedited, implying that he could not see any reason for delay and that the question involved was whether or not the waters of Shelikof Strait were international. Mr. Herrington commented that the Japanese vessels were seeking roe herring and that the habits of Alaska herring were somewhat different than those in some other areas of the world, that spawning was inshore on the beach and rocks. He had further heard that the Japanese fishermen in their eagerness to obtain access to these roe herring had come somewhat closer to the beach than perhaps had been intended. He stated that he would bring Mr. Ito's statement to the attention of the United States Government. If Mr. Ito wished further details on this he would be happy to arrange for him to talk with the State Department's legal people who were handling this matter. Mr. Ito finally remarked that he looked forward to conclusion of the matter as soon as practicable.

Mr. Herrington also stated that the United States Government had no information regarding Soviet boats fishing in Shelikof Strait. If the Japanese Government had factual information on this matter the United States Government would be most happy to receive it. Mr. Ito replied that the matter had been reported in a Russian publication and he would provide Mr. Herrington with the reference. (Up to the present he has not done so.)

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STATEMENT

JAPANESE FISHING VESSELS - KODIAK - SHELIKOF STRAITS

The first knowledge I had of a Japanese fishery in the Kodiak area was on Thursday, March 29, 1962. Fish and Wildlife Service Agent, John Klingbiel, informed me that the Japanese were off Chiniak Point about 10 miles. The Fish and Game vessel, S/V HIGBEE, was on her way to Ugak Bay to drop some men on an egg take program and had to go via Chiniak to get there on this same date. We called the S/V HIGBEE on the radio, and Lynn Crosby said he had seen a schooner type vessel earlier that day, but as he approached, it turned back out to sea.

Our next word from the Japanese was Saturday, March 31, about 9:10 A.M., when Al Crotty, A Kodiak Airways Pilot, spotted the Mother Ship and five catcher boats off Seven Mile Beach on the Shelikof Straits. I called Bob Simon and advised him of our problem. Bud Weberg and Buck Stewart arrived in Kodiak on this day taking a big load off my shoulders.

Sunday, April 1, a number of fishermen, coming from Alitak Bay, saw the Japanese in Shelikof as they passed. Slim and his wife, on the vessel RECORA, took pictures of them and Fritz Deveau came along side one to look him over. Bob Simons and Oscar Dyson chartered a plane and flew over the boats in the morning.

Wednesday, April 4, we left Kodiak in the Goose N-710 and headed south on the east side of Kodiak Island. The Mother Ship was the first one we located about 5 miles south of Black Point. A short time after this sighting, we saw a seiner and two smaller

Exhibit "I-J" - Statement - Japanese Fishing Vessels - Kodiak-Shelikof Straits - March and April 1962.

vessels coming from the direction of Kodiak Island. We continued on south toward the Trinity Islands and found two more fishing vessels anchored between the Trinity Islands and Aiaktalik Island.

Around 5:00 P.M. we met the S/V TEAL in Kupreonof Straits and took Ed Martin off and put Tom Richardson and Dan Hennick aboard to catch and observe the gear these vessels were using.

Thursday, April 5, we sighted the Mother Ship south of Ugat Island. The catcher boats, four in number, were inside of the passage of Narrow Cape and clear up by Pasagshak Bay, inside the mouth of Ugat Bay. Dexter Lall and Ed Martin were on this flight with us. Later this day, around 3:15 P.M. we spotted the Mother Ship and the smaller boats heading across from Chiniak Point toward Marmot Island. The Fish and Wildlife Service vessel, JOHN R. MANNING, was approaching the Mother Ship at a north east course from Long Island.

Friday, April 6, we were unable to locate the Japanese however, we know they were somewhere in the Shelikof Straits.

Saturday, April 7, 10:40 A.M. we made contact with the first Japanese fishing vessel off Uganik Island. This boat was closer than three miles and had gear in the water that required buoys and flags. This was our first look at this vessel built like a Coast Guard Buoy Tender. The Mother Ship was further out in the Shelikof Straits. We later on located four other Japanese fishing boats in the Shelikof Straits and off Little River. Three were anchored and one was running around the others. We were unable

to see any fish at this time so we went back to Kodiak. Dexter Lall and Howard Marks were passengers on this flight to observe.

Sunday, April 8, no contact was made with the Japanese.

Monday, April 9, 2:45 P.M. we located the Japanese just outside of Uganik Island. Three of these vessels were traveling north. The Mother Ship was out in the Shilikof drifting. Observers on this flight were George Gray, Tom Richardson, and Gladys Buell.

Tuesday, April 10, 5:15 P.M. the weather was such that N-710 was able to land in the Shelikof Strait and taxi up to the Banshu Maru #31. Buck Stewart and I went aboard to talk to these people. We had difficulty in talking to them and we were there about 45 minutes. While on board, Buck Stewart wrote on a piece of paper for the one who spoke broken English, that Shelikof Straits was State waters. This buck toothed son jabbered among the others about this and we left a short time later. They did tell us we were welcome to return later (which we did). Benny Grotecloss, Don Roberts, and Buck Stewart were the passengers on this flight.

Wednesday, April 11, Bill Valentine and I flew to Port Bailey where we boarded the S/V TEAL and took off to locate the Japanese Fleet. At 9:00 P.M. we located them off Uyak Bay, riding the hook. We went in behind Harvester Island and anchored for the night.

Thursday, April 12, we left Harvester Island and headed out into Shelikof Straits to take pictures of the vessels we had located the night before. At 11:00 A.M. we took our first pictures of the Japanese seiner. Our next contact was the Mother Ship out in the

Shelikof Straits. After takin, these ships we came back toward Uyak Bay and took pictures of the other three vessels. We tied up that evening in Uyak Bay and I was removed from the S/V TEAL about 6:15 P.M. At that time Fred Woldstad was put on in place of me.

Friday, April 13, I contacted the S/V TEAL by radio and was informed that the Japanese had left the area they were in yesterday. They were following a seiner toward Karluk, but the seas were getting tough and they were going to turn back. At 3:15 P.M., while Buck was with us in N-710, we overheaded a Japanese seiner closer than a mile to East Point, between Uganik Passage and Uganik Bay. This vessel was away inside the Bay. Two other Japanese vessels were right outside Uganik Bay, approximately two miles from Noisy Island. At 3:40 P.M. Sueman Moon was dropped off with Buck Stewart on the S/V TEAL, which had moved to Harvester Island to pick up these passengers.

Saturday, April 14, was one of confusion. So many orders were coming in from all sides along with 40 National Guardsmen and several State Policemen. We started flying about 7:00 A.M. to locate the Japanese. Our first sighting was one Japanese catcher boat off Uyak Bay. A short time later we saw three more Japanese vessels about one and one-half miles off Rocky Point, going toward Karluk. When we were on our return trip to Kodiak, we sighted the first small catcher boat anchored up about two miles off Noisy Island. About 7:45 P.M. the S/V TEAL had arrived from Uyak Bay and the S/V WIDGEON came around from Port Bailey and took the

Japanese vessel into custody.

Sunday, April 15, Dave Henley and I left Kodiak in the Champion and were out to check the where abouts of the S/V TEAL. Spotted it and the Japanese Ship coming around Spruce Island, heading toward Kodiak. 9:30 A.M. the S/V TEAL arrived Kodiak and dropped the hook with the first Japanese vessel alongside. Judge Davis arrived in Kodiak, via the National Guard plane at 2:00 P.M. to arraign the Captain of the Banshu Maru #31, and the small catcher boats Captain. Judge Davis left Kodiak at 3:45 P.M. on the National Guard plane for Anchorage. The Federal Health Officer, Lindberg, from Anchorage, came in earlier this date on the Fish and Wildlife Service Goose, flown by Smith. We ended the day by taking a second Japanese boat at 11:44 P.M. some where in the Shelikof Straits. This was the operations that caused State Police Sgt. Jerry Williams to break his leg.

Monday, April 16, we started at 4:00 A.M. to ready the Goose for a flight to Harvester Island, where the Skipper from the Banshu Maru #31 would be placed onboard the S/V WIDGEON and carried back to his ship in the Shelikof to await further development. The S/V WIDGEON and the small Japanese schooner were behind the Island awaiting the Coast Guard plane to take Sgt. Williams back to Kodiak. We, in town, spent the rest of the morning getting supplies and water for the first Japanese boat that arrived in Kodiak. The S/V WIDGEON arrived Kodiak with the second Japanese boat about 11:00 P.M. and we started out by having the Federal Health Officer Woolridge, from Anchorage, check the crew over.

COPY

Tuesday, April 17, 2:00 A.M. the Japanese schooner tied up to the other one in Kodiak Harbor and the S/V WIDGEON moved back into the Small Boat Harbor. 8:00 A.M. picked up the two Captains from the small boats and brought them over for their Attorney to talk with (Peter J. Kalimarides). Court was held with Judge James Fitzgerald presiding later in the day. Nothing much was gained today because Captain Mongo Hanisaki wanted the Fish Commander, from the Mother Ship, to come into court and help him out. We got the message out to the Banshu Maru, via radio contact from one of the small Japanese boats in the Kodiak Small Boat Harbor, and made arrangements for one of the seiners to bring the Fish Commander of this operation into the Kupreanof Straits, where we would meet them.

Wednesday, April 18, 11:00 A.M. we flew to Port Bailey where we took the M/V TEAL, which had been moved to Port Bailey earlier, and went out to meet the Commander. When we returned to Port Bailey the Japanese boat anchored out in the Harbor and we got back in N-710 and flew back to Kodiak so that the hearing could go on. The M/V TEAL was instructed to go back and tie up to the seiner after we (the Commander, Captain of Banshu Maru and myself) left in the plane. The Captain and the Commander stayed this night at the Kodiak Hotel, where the idea was intertained of finishing this hearing the next day.

Thursday, April 19, the two catcher boat Captains were brought over about 8:30 A.M. and before noon the bail for the three Captains was raised and what ever else needing attention was taken care of. I received word to escort the two vessels back to the Shelikof as

soon as I could get under way. The Captain and the Commander from the Banshu Maru were flown back to Port Bailey by Dave Henley and Buck Stewart, where they were put on the Japanese seiner for the return trip to the Mother Ship. The M/V WIDGEON, on which I was stationed, left the two Japanese boats on the other side of Whale Island at 7:10 P.M. and we then headed for home.

O. R. McKinley, Protection Officer
Kodiak, Alaska

COPY

ADF&G SIGHTING

March 31	Time 1100	Mothership and 2 catcher vessels 57° 40' 45" N 154° 10' 30" W. off Rocky Point 1 mile, fish on mothership, crew apparently sorting.
April 1	Time 1430	Mothership 57° 57' 45" N. 153° 43' 15" W. off Uganik, four catchers 57° 43' 10" N., 154° 05' 30" W. off Harvester, catchers fishing.
April 4	Time 1200	Mothership and 3 catchers 56° 54' 15" N. 153° 15' 15" W. off Black Pt., 2 catchers anchored within one mile Cape Sitkinak about noon at 56° 35' N., 153° 52' 30" W.
April 5	Time 1000	Mothership 57° 19' N 152° 24' W off Ugak I. 4 catchers 57° 22' N between Ugak I. and Gull Point apparently scanning with depth sounder.
April 7	Time 1100	Mothership one catcher 57° 57' 45" N., 153° 38' 45" W off Noisy Island. Four catchers 57° 48' 30" N., 153° 59' 30" W off Kuliuk 2 miles. Just pulling anchor.
April 9	Time 1400	Mother 58° 01' 15" N 153° 52' 30" W drifting 3 catchers 58° 00' 00" N 153° 39' 30" W going NE 1 catcher 2 miles behind
April 10	Time 1700	Mothership 58° N. 154° W. 3 catchers 57° 57' N., 153° 42' W. Catchers moving toward mothership
April 11	Time 1205	Mothership 58° N 154° W 2 catchers 57° 43' N 154° 05' W. four men pulli lines over side 2 catchers 57° 57' N 154° 33' W. docks & gear w
April 12	Time 1300	Mothership 57° 45' 15" N 154° 04' 30" W slowly sou 4 catchers 57° 42' N 154° 01' W at anchor. Uyak vicinity.

All locations are approximate, they are aircraft sightings and most of the times are within the nearest hour.

MOTHERSHIP REPORTS TO COAST GUARD

1st	Noon	57° 59' N.	153° 45'W.	drifting
	8 p.m.	57° 56' N.	154° 24' W.	"
2nd	Noon	57° 30' N.	154° 49' W.	speed 8.87
	8 p.m.	56° 53' N.	154° 27' W.	drifting
3rd	Noon	56° 25' N.	155° 02' W.	
	8 p.m.	56° 7' N.	153° 46' W.	
4th	Noon	56° 54' N.	153° 21' W.	
	8 p.m.	56° 51' N.	153° 15' W.	drifting
5th	Noon	57° 19' N.	152° 26' W.	8.27 kn.
	8 p.m.	58° 09' N.	151° 34' W.	7.5 kn.
6th	Noon	58° 52' N.	152° 58' W.	6.88 true course 201°
	8 p.m.	58° 06' N.	153° 39' W.	drifting
7th	Noon	57° 56' N.	154° 01' W.	drifting
	8 p.m.	58° 05' N.	153° 59' W.	"
8th	Noon	57° 57' N.	153° 52' W.	drifting
	8 p.m.	57° 58' N.	153° 45' W.	"
9th	Noon	57° 59' N.	153° 55' W.	drifting
	8 p.m.	58° 00' N.	154° 03' W.	"
10th	Noon	57° 55' N.	154°08' W.	drifting
	8 p.m.			
11th	Noon	57° 57' N.	154° 00' W.	drifting
	8 p.m.	57° 58' N.	154° 06' W.	
12th	Noon	57° 47' N.	154° 09' W.	

DX IO

CANADA

DEPUTY MINISTER OF FISHERIES
OTTAWA

June 25, 1957.

U/TW
JUL 1 1957

Mr. W.C. Herrington
Special Assistant for Fisheries
and Wildlife to the
Under-Secretary of State
Department of State
Washington, D.C.

Dear Mr. Herrington:

Re Seattle Conference on Co-ordination of Fisheries Regulations

In reading over the Summary Proceedings of the above Conference, I note that on page 7, paragraph 4, reference is made to an agreement to submit a chart showing the definitive lines of the seaward limits of the waters of Alaska.

In order to complete our record I would appreciate receiving the chart in question as soon as possible. I would also be most happy if you would let me know whether there is anything we have overlooked on our part required to complete the Agreement.

Yours very truly,

G. R. Clark
Deputy Minister

[redacted]

Exhibit "I-O" -

Letter from G. R. Clark, Deputy Minister of Fisheries Ottawa, Canada to Mr. W. C. Herrington, Special Assistant for Fisheries and Wildlife to the Under-Secretary of State dated June 25, 1957 regarding Seattle Conference on Coordination of Fisheries Regulations.

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NO.: A-105 October 8, 1957

SUBJECT: State and Federal Fishery Legislation

U/FW
OCT 10 1957

TO: The American Embassy, OTTAWA

Embassy Despatch No. 93, July 31, 1957.

The Embassy will remember that among other understandings reached at the Seattle Conference on the Coordination of Fishery Regulations between the United States and Canada of February 1957, it was agreed that action would be taken on both sides of the border with respect to net fishing for salmon in the high seas.

There are enclosed the following certificated copies of state statutes in this regard:

1. Chapter 108 of the laws of 1957 of the State of Washington.
2. Chapter 152 Oregon Laws 1957.
3. Chapter 424 of the laws of California of 1957.

There is also enclosed the following Federal legislation on this matter:

1. Public Law 85-114.
2. Regulation of the Secretary of the Interior issued on July 25, 1957 with regard to Part 130 of the Alaska Commercial Fisheries Regulations.

A copy of Public Law 279, 83rd Congress, The North Pacific Fisheries Act of 1954 which P.L. 85-114 amends is also enclosed for information.

The Embassy is requested to forward these documents to Mr. George R. Clark, Deputy Minister of Fisheries of Canada.

DULLES

Enclosures:
1. Chapter 108
2. Chapter 152
3. Chapter 424
4. Public Law 85-114
5. Regulation - Secretary of the Interior
6. Public Law 279.

U/FW
Herrington
Jones
Davies
Cutler
Dodd

UNCLASSIFIED

DRAFTED BY: U/FW [illegible] 10/7/57
APPROVED BY: [illegible]
CLEARANCES:
BNA

[redacted]

Exhibit "I-P" - Memorandum from Mr. Dulles, Secretary of State, dated October 8, 1957 to the American Embassy, Ottawa regarding State and Federal Fishery Legislation.

DX IU

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1941

Sec. 203.1 Definition, Yukon-Kuskokwim area. The Yukon-Kuskokwim area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham northward to the parallel of 60 degrees north latitude.

Sec. 204.1 Definition, Bristol Bay area. The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point on the coast 3 statute miles south of Cape Menshikof.

Sec. 205.1 Definition, Alaska Peninsula area. The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters of the Alaska Peninsula from a point on the coast 3 statute miles south of Cape Menshikof on the Bering Sea shore, extending in a southwesterly direction to Unimak Pass, thence in a northeasterly direction along the Pacific side of the Alaska Peninsula to Castle Cape (Tulumnit Point). The waters of Unimak, the Sanak, the Shumagin and all other adjacent islands are included.

Sec. 206.1 Definition, Aleutian Islands area. The Aleutian Islands area is hereby defined to include all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass.

Sec. 207.1 Definition, Chignik area. The Chignik area is hereby defined to include the territorial coastal and tributary waters of Alaska along the mainland shore from Castle Cape (Tulumnit Point) to Cape Kumnik. The waters of Chanklut, Sutwik, and all other adjacent islands are included.

Sec. 208.1 Definition, Kodiak area. The Kodiak area is hereby defined to include the waters of the mainland shore extending from Cape Douglas southwesterward to Cape Kumnik and the territorial coastal and tributary waters of Alaska surrounding Kodiak, Afognak, and adjacent islands, including Chirikof Island and the Semidi Islands.

Sec. 209.1 Definition, Cook Inlet area. The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

Sec. 210.1 Definition, Resurrection Bay area. The Resurrection Bay area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east.

Sec. 211.1 Definition, Prince William Sound area. The Prince William Sound area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Cape Fairfield on the west and Point Whitshed on the east.

1941, Cont'd:

Sec. 212.1 Definition, Copper River area. The Copper River area is hereby defined to include all territorial coastal and tributary waters of Alaska between Point Whitshed on the west and Point Martin on the east, including Egg Islands and the other islands between these points.

Sec. 213.1 Definition, Bering River area. The Bering River area is hereby defined to include all territorial coastal and tributary waters of Alaska between Point Martin on the west and Cape Suckling on the east, including Martin Islands, Kanak Island, Wingham Island, Kayak Island, and any other island between Point Martin and Cape Suckling.

Sec. 220.1 Definition, Southeastern Alaska area. The Southeastern Alaska area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Dixon Entrance on the south to and including Yakutat Bay on the north.

Sec. 221.2 Definition, Yakutat district. All territorial waters within a line extending from Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, to Mount Fairweather, thence following the international boundary to a point at 140 degrees 28 minutes west longitude, thence south to a point at 59 degrees 36 minutes north latitude, 140 degrees 28 minutes west longitude, thence to Cape Fairweather at the point of beginning.

Sec. 222.2 Definition, Icy Strait district. All territorial waters within a line extending from a point west of Yakobi Island at 58 degrees north latitude, 136 degrees 51 minutes west longitude, to a point at 58 degrees north latitude, 134 degrees 58 minutes west longitude thence north to the light at Point Augusta, thence to the southenstern extremity of Point Couverden, hence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees north latitude, 136 degrees 51 minutes west longitude.

Sec. 223.2 Definition, Western district. All territorial waters within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 135 degrees 4 minutes west longitude, thence to a point at 58 degrees north latitude, 136 degrees 51 minutes west longitude, thence east to 134 degrees 58 minutes west longitude, thence north to the light at Point Augusta, thence to the southeastern extremity of Point Converden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

Sec. 224.2 Definition, Eastern district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

1941, Cont'd:

Sec. 225.2 Definition, Stikine district. All territorial waters within a line extending from Horn Cliffs on the mainland to Frederick Point on Mitkof Island, thence to Point Howe, thence to South Craig Point on Zarembo Island, thence to Drag Island in Chichagof Pass, thence to Chichagof Peak on Wrangell Island, thence to Rabbler Point on the mainland, thence to Mount Cote, thence following the international boundary to Castle Mountain, thence to the point of beginning at Horn Cliffs.

Sec. 226.2 Definition, Sumner Strait district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to a point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Frederick Point on Mitkof Island, thence to Point Howe, thence to South Craig Point on Zarembo Island, thence to Drag Island in Chichagof Pass, thence to Chicagof Peak on Wrangell Island, thence to Rabbler Point on the mainland, thence to Mount Cote, thence following the international boundary to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to a point at 55 degrees 40 minutes north latitude, 132 degrees 50 minutes west longitude, thence west to a point at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

Sec. 227.2 Definition, Clarence Strait district. All territorial waters within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees 40 minutes west longitude, thence north to a point west of Point Davison at 55 degrees north latitude, 131 degrees 40 minutes west longitude, thence to the southern extremity of Point Davison, thence northerly along the watershed of Annette Island to the northern extremity of Walden Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to the southern extremity of Canmanz Point, thence northeasterly along the watershed of Cleveland Peninsula to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

1941, Cont'd:

Sec. 228.2 Definition, South Prince of Wales Island district. All territorial waters within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 35 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 55 degrees 40 minutes north latitude, 132 degrees 50 minutes west longitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

Sec. 229.2 Definition, Southern district. All territorial waters within a line beginning at a point on the international boundary at 131 degrees 40 minutes west longitude and following that boundary to Mount Lewis Cass, then southerly and westerly along the watershed to the southern extremity of Caamano Point, thence to Vallentar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Walden Point on Annette Island, thence southerly along the watershed of Annette Island to Davison Point, thence west to a point at 55 degrees north latitude, 131 degrees 40 minutes west longitude, thence due south to the point of beginning on the international boundary at 131 degrees 40 minutes west longitude.

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1955

§ 103.1 Definition. The Kotzebue-Yukon-Kuskokwim area is defined to include all territorial coastal and tributary waters of Alaska from Point Hope southward to Cape Newenham.

§ 104.1 Definition. The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point on the coast 3 statute miles south of Cape Menshikof.

§ 105.1 Definition. The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay including all adjacent islands.

§ 106.1 Definition. The Aleutian Islands area is hereby defined to include all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass.

§ 107.1 Definition. The Chignik area is hereby defined to include the territorial waters along the mainland from the western point at the entrance to Kuiukta Bay to Cape Igvak, including adjacent islands.

§ 108.1 Definition. The Kodiak area is hereby defined to include the waters of the mainland shore extending from Cape Douglas southwestward to Cape Igvak and the territorial coastal and tributary waters of Alaska surrounding Kodiak, Afognak, and adjacent islands, including Chirikof Island and the Semidi Islands.

§ 109.1 Definition. The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

§ 110.1 Definition. The Resurrection Bay area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east.

§ 112.1 Definition. The Copper River area is hereby defined to include all territorial coastal and tributary waters of Alaska between Point Whitshed on the west and Point Martin on the east, including Egg Islands and the other islands between these points.

§ 113.1 Definition, Bering River area. All territorial waters between Cape Suckling and Point Martin.

§ 114.1 Definition, Yakutat area. All territorial waters between Cape Fairweather and Cape Suckling.

§ 115.1 Definition, Southeastern Alaska area. All territorial waters between Dixon Entrance and Cape Fairweather.

1955, Cont'd:

§ 117.2 Definition, Icy Strait district. All territorial waters within a line extending from a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, including all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude.

§ 118.2 Definition, Western district. All territorial waters within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 136 degrees 4 minutes west longitude, thence to a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude, thence east to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, excluding all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

§ 119.2 Definition, Eastern district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

§ 120.2 Definition, Stikine district. All waters within a line commencing at Castle Mountain and passing successively through Horn Cliffs, Frederick Point, Point Alexander, Low Point, Drag Island, Chichagof Peak, Babbler Point, and Mount Cote.

§ 121.2 Definition, Sumner Strait district. All territorial waters bounded on the north by a line commencing on the mainland at Mount Cote and passing successively through Babbler Point, Chichagof Peak, Drag Island, Low Point, Point Alexander, Frederick Point, Horn Cliffs, Kupreanof Island east shore at 56 degrees 54 minutes north latitude, the northernmost end of Duncan Canal, Keku Strait at 56 degrees 40 minutes north latitude, the watershed of Kuiu Island, and the latitude of Cape Decision projected westerly; and on the south by a line following the watershed of Cleveland Peninsula from the International Boundary to Union Point and passing successively through Ernest Point, the southernmost point on Etolin Island, the watershed of Etolin Island, Point Harrington, the northern end of East Island, the southern end of West Island, Prince of Wales Island east shore at 56 degrees 9 minutes 15 seconds north latitude, El Capitan Passage at 56 degrees 7 minutes 36 seconds north latitude, the watershed of Kosciusko Island, the southernmost point on Kosciusko Island, Wood Island, and the latitude of Wood Island projected westerly.

1955, Cont'd:

§ 122.2[3] Definition, Clarence Strait district. All territorial waters within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees west longitude, thence to Mary Island light, Hog Rocks light, Bold Island light, Race Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to Point Higgins, thence along the watershed of Revillagigedo Island to Claude Point, thence to Point Lees, thence to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

§ 123.2 Definition, South Prince of Wales Island district. All territorial waters within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 56 degrees 7 minutes 36 seconds north latitude, thence due west to the east coast of Kosciusko Island, thence southerly along the watershed of Kosciusko Island to the southern extremity of the island at 133 degrees 43 minutes west longitude, thence due south to 55 degrees 40 minutes north latitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

§ 124.2 Definition, Southern district.[4] All territorial waters within a line beginning at a point on the international boundary at 131 degrees west longitude and following that boundary to Mount Lewis Cass, thence southerly to Point Lees, thence to Claude Point, thence southerly along the watershed of Revillagigedo Island to Point Higgins, thence to Vallenar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Race Point, Bold Island light, Hog Rocks light, Mary Island light, and the international boundary at 131 degrees west longitude.

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Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1956

§ 103.1 Definition. The Kotzebue-Yukon-Kuskokwim area is defined to include all territorial coastal and tributary waters of Alaska from Point Hope southward to Cape Newenham.

§ 104.1 Definition. The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point on the coast 3 statute miles south of Cape Menshikof.

§ 105.1 Definition. The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay including all adjacent islands.

§ 106.1 Definition. The Aleutian Islands area is hereby defined to include all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass.

§ 107.1 Definition. The Chignik area is hereby defined to include all waters of Alaska on the south side of the Alaska Peninsula between Kilokak Rocks and the western point at the entrance to Kuiukta Bay, including adjacent islands.

§ 108.1 Definition. The Kodiak area is hereby defined to include all waters from Kilokak Rocks to Cape Douglas, including Kodiak, Afognak, and adjacent islands.

§ 109.1 Definition. The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

§ 110.1 Definition. The Resurrection Bay area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east.

§ 111.1 Definition. The Prince William Sound area is hereby defined to include all waters of Alaska between Cape Fairfield and Point Whitshed.

§ 112.1 Definition. The Copper River area is hereby defined to include all waters of Alaska between Point Whitshed and Point Martin.

§ 113.1 Definition. The Bering River-Yakataga area is hereby defined to include all waters between Point Martin and Icy Cape.

§ 114.1 Definition, Yakutat area. The Yakutat area is hereby defined to include all waters of Alaska between Cape Fairweather and Icy Cape.

1956, Cont'd:

§ 115.1 Definition, Southeastern Alaska area. All territorial waters between Dixon Entrance and Cape Fairweather.

§ 117.2 Definition, Icy Strait district. All territorial waters within a line extending from a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, including all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude.

§ 118.2 Definition, Western district. All territorial waters within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 135 degrees 4 minutes west longitude, thence to a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude, thence east to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, excluding all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northeast extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

§ 119.2 Definition, Eastern district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

§ 120.2 Definition, Silkine district. All waters within a line commencing at Castle Mountain and passing successively through Horn Cliffs, Frederick Point, Point Alexander, Low Point, Drag Island, Chichagof Peak, Babbler Point, and Mount Cote.

§ 121.2 Definition, Sumner Strait district. All territorial waters bounded on the north by a line commencing on the mainland at Mount Cote and passing successively through Babbler Point, Chichagof Peak, Drag Island, Low Point, Point Alexander, Frederick Point, Horn Cliffs, Kupreanof Island east shore at 56 degrees 54 minutes north latitude, the northernmost end of Duncan Canal, Keku Strait at 56 degrees 40 minutes north latitude, the watershed of Kuiu Island, and the latitude of Cape Decision projected westerly; and on the south by a line following the watershed of Cleveland Peninsula from the International Boundary to Union Point and passing successively through Ernest Point, the southernmost point on Etolin Island, the watershed of Etolin Island, Point Harrington, the northern end of East Island, the southern end of West Island, Prince of Wales Island east shore at 56 degrees [illegible] minutes 15 seconds north latitude, El Capitan Passage at 56 degrees 7 minutes 30 seconds north latitude, the watershed of Kosciusko Island, the southernmost point on Kosciusko Island, Wood Island, and the latitude of Wood Island projected westerly.

1956, Cont'd:

§ 122.2[1] **Definition, Clarence Strait district.** All territorial waters within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees west longitude, thence to Mary Island light, Hog Rocks light, Bold Island light, Race Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to Point Higgins, thence along the watershed of Revillagigedo Island to Claude Point, thence to Point Lees, thence to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

§ 123.2 **Definition, South Prince of Wales Island district.** All territorial waters within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 56 degrees 7 minutes 30 seconds north latitude, thence due west to the east coast of Kosciusko Island, thence southerly along the watershed of Kosciusko Island to the southern extremity of the island at 133 degrees 43 minutes west longitude, thence due south to 55 degrees 40 minutes north latitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

§ 124.2 **Definition, Southern district.**[2] All territorial waters within a line beginning at a point on the international boundary at 131 degrees west longitude and following that boundary to Mount Lewis Cass, thence southerly to Point Lees, thence to Claude Point, thence southerly along the watershed of Revillagigedo Island to Point Higgins, thence to Vallenar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Race Point, Bold Island light, Hog Rocks light, Mary Island light, and the international boundary at 131 degrees west longitude.

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1957

§ 103.1 **Definition.** The Kotzebue-Yukon-Kuskokwim area includes all waters of Alaska between Point Hope and Cape Newenham.

§ 104.1 **Definition.** The Bristol Bay area includes all waters of Alaska in Bristol Bay east of a line from Cape Newenham to a point 3 statute miles south of Cape Menshikof.

§ 105.1 **Definition.** The Alaska Peninsula area includes all waters of Alaska from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay.

§ 106.1 **Definition.** The Aleutian Islands area includes all waters of Alaska in the Aleutian Islands west of, and including, Unimak Pass.[3]

§ 107.1 **Definition.** The Chignik area is hereby defined to include all waters of Alaska on the south side of the Alaska Peninsula between the southern entrance to Imuya Bay near Kilokak Rocks and the western point at the entrance to Kuiukta Bay, including adjacent islands.

§ 108.1 **Definition.** The Kodiak area is hereby defined to include all waters of Alaska from the southern entrance to Imuya Bay near Kilokak Rocks, to Cape Douglas, including Kodiak, Afognak, and adjacent islands.

§ 109.1 **Definition.** The Cook Inlet area includes all waters of Alaska in Cook Inlet north of Cape Douglas and west of Point Gore, including the Barren Islands.

§ 110.1 **Definition.** The Resurrection Bay area includes all waters of Alaska in the Gulf of Alaska between Point Gore and Cape Fairfield.

...

§ 111.1 **Definition.** The Prince William Sound area is hereby defined to include all waters of Alaska between Cape Fairfield and Point Whitshed.

§ 112.1 **Definition.** The Copper River area is hereby defined to include all waters of Alaska between Point Whitshed and Point Martin.

§ 113.1 **Definition.** The Bering River-Yakataga area is hereby defined to include all waters of Alaska between Point Martin and Icy Cape.

§ 114.1 **Definition, Yakutat area.** The Yakutat area is hereby defined to include all waters of Alaska between Cape Fairweather and Icy Cape.

1957, Cont'd:

115.1 **Definition, Southeastern Alaska area.** The southeastern Alaska area includes all waters of Alaska in southeastern Alaska between Cape Fairweather and Dixon entrance.

§ 117.2 **Definition, Icy Strait district.** All waters of the area within a line extending from a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, including all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude.

§ 118.2 **Definition, Western district.** All waters of the area within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 136 degrees 4 minutes west longitude, thence to a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude, thence east to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, excluding all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

§ 119.2 **Definition, Eastern district.** All waters of the area within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degree 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thences west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

§ 120.2 **Definition, Stikine district.** All waters within a line commencing at Castle Mountain and passing successively through Horn Cliffs, Frederick Point, Point Alexander, Low Point, Drag Island, Chichagof Peak, Hour Point, Bubbler Point, and Mount Cote.

§ 121.2 **Definition, Sumner Strait district.** All waters of the area bounded on the north by a line commencing on the mainland at Mount Cote and passing successively through Bubbler Point, Hour Point, Chichagof Peak, Drag Island, Low Point, Point Alexander, Frederick Point, Horn Cliffs, Kupreanof Island east shore at 56 degrees 54 minutes north latitude, the northernmost end of Duncan Canal, Keku Strait at 56 degrees 40 minutes north latitude, the watershed of Kuiu Island, and the latitude of Cape Decision projected westerly; and on the south by a line following the watershed of Cleveland Peninsula from the International Boundary to Union Point and passing successively through Ernest Point, the southernmost point on Etolin Island, the watershed of Etolin Island, Point Harrington, the northern end of East Island, the southern end of West Island, Prince of Wales Island east shore at 56 degrees 9 minutes 15 seconds north latitude, El Capitan Passage at 56 degrees 7 minutes 36 seconds north latitude, the watershed of Kosciusko Island, the southernmost point on Kosciusko Island, Wood Island, and the latitude of Wood Island projected westerly.

1957, Cont'd:

§ 122.2 **Definition, Clarence Strait district.** All waters of the area within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees west longitude, thence to Mary Island light, Hog Rocks light, Bold Island light, Race Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to Point Higgins, thence along the watershed of Revillagigedo Island to Claude Point, thence to Point Lees, thence to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Moesman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

§ 123.2 **Definition, South Prince of Wales Island district.** All waters of the area within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 56 degrees 7 minutes 36 seconds north latitude, thence due west to the east coast of Kosciusko Island, thence southerly along the watershed of Kosciusko Island to the southern extremity of the island at 133 degrees 43 minutes west longitude, thence due south to 55 degrees 40 minutes north latitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

§ 124.2 **Definition, Southern district.** All waters of the area within a line beginning at a point on the international boundary at 131 degrees west longitude and following that boundary to Mount Lewis Cass, thence southerly to Point Lees, thence to Claude Point, thence southerly along the watershed of Revillagigedo Island to Point Higgins, thence to Vallenar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Race Point, Bold Island light, Hog Rocks light, Mary Island light, and the international boundary at 131 degrees west longitude.

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1958

§ 103.1 *Definition.* The Arctic area includes all waters of Alaska between Demarcation Point and Cape Newenham.

§ 104.1 *Definition.* The Bristol Bay area includes all waters of Alaska in Bristol Bay east of a line from Cape Newenham to a point 3 statute miles south of Cape Menshikof.

§ 105.1 *Definition.* The Alaska Peninsula area includes all waters of Alaska from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay.

§ 106.1 *Definition.* The Aleutian Islands area includes all waters of Alaska in the Aleutian Islands west of, and including, Unimak Pass.

§ 107.1 *Definition.* The Chignik area is hereby defined to include all waters of Alaska on the south side of the Alaska Peninsula between the southern entrance to Imuya Bay near Kilokak Rocks and the western point at the entrance to Kuiukta Bay, including adjacent islands.

§ 108.1 *Definition.* The Kodiak area is hereby defined to include all waters of Alaska from the southern entrance to Imuya Bay near Kilokak Rocks, to Cape Douglas, including Kodiak, Afognak, and adjacent islands.

§ 109.1 *Definition.* The Cook Inlet area includes all waters of Alaska in Cook Inlet north of Cape Douglas and west of Point Gore, including the Barren Islands.

§ 110.1 *Definition.* The Resurrection Bay area includes all waters of Alaska in the Gulf of Alaska between Point Gore and Cape Fairfield.

§ 111.1 *Definition.* The Prince William Sound area is hereby defined to include all waters of Alaska between Cape Fairfield and Point Whitshed.

1958, Cont'd:

§ 112.1 *Definition.* The Copper River area is hereby defined to include all waters of Alaska between Point Whitshed and Point Martin.

§ 113.1 *Definition.* The Bering River-Yakataga area is hereby defined to include all waters of Alaska between Point Martin and Icy Cape.

§ 114.1 *Definition, Yakutat area.* The Yakutat area is hereby defined to include all waters of Alaska between Cape Fairweather and Icy Cape.

§ 115.1 *Definition, southeastern Alaska area.* The southeastern Alaska area includes all waters of Alaska in southeastern Alaska between Cape Fairweather and Dixon entrance.

DX IV

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ENDORSED:

FILED
IN OPEN COURT
Superior Court
State of Alaska
at Anchorage
Date April 19 1962
Clerk
Deputy

STATE OF ALASKA,
Plaintiff,
Vs.
MONGO HANASAKI, MINE SOTASHI,
AND NIGASHIMA TADAO
Defendants,

No. Cr. 62-141, 62-142, 62-1 A

AGREEMENT

THIS AGREEMENT, made and entered into by and between the State of Alaska, through its duly authorized representative and District Attorney, James C. Merbs, and the Eastern Pacific Fisheries Company, employer of the above-named Defendants, and the Defendants, by and through their attorney, Peter J. Kalamarides, and approved and consented to by Captain Mongo Hanasaki,

WITNESSETH:

WHEREAS, the above named Defendants and other employees of the Eastern Pacific Fisheries Company of Japan have been engaged in a fishing enterprise in Shelikof Straits off the coast of Alaska, and,

WHEREAS, the State of Alaska having claimed the Shelikof Strait area as waters within the exclusive jurisdiction of the State of Alaska, and

WHEREAS, Eastern Pacific Fisheries Company has contended and still contends that the said waters are international waters not within the exclusive jurisdiction of the State of Alaska, and

WHEREAS, the State of Alaska seeking to effectuate its claim and purpose that the Shelikof Straits are within its exclusive jurisdiction has caused the arrest of the above-named

Defendants and the taking into custody of the fishing vessels [illegible] and [illegible] and both parties signatory to this Agreement withing to alleviate the necessity of further arrest, seizure or controversy over the jurisdiction of the said waters, it is mutually agreed as follows:

1. That neither of the parties signatory to this Agreement, to-wit; the State of Alaska nor Easter Pacific Fisheries Company shall by entering into this Agreement, waive, surrender or abrogate any rights, historical or otherwise that they may have had or claim, or hay have, or which may be in exictence at the time of the signing of this Agreement.

2. Eastern Pacific Fisheries Company agrees not to fish in the Shelikof Straits and specifically not to fish within a base line drawn as follows:

> Beginning at a point on the outer perimeter of Barren Islands and proceeding in a Southerly line to the outermost perimeter of Marmot Islands; thence, on a line to the outermost perimeter of Ugak Island; thence on a line to the outermost perimeter of Cape Barnabas; thence, on a line to the outermost perimeter of Black Point; thence, on a line to the outermost perimeter of Two-Headed Island; thence, on a line to the outermost perimeter of Sitkinak Island; thence, on a line to the outermost perimeter of Tugidak Island; thence, on a line to Low Cape and along the coastline to Cape Ikolik; thence, on a straight line diredtly across the Straits to Kilokak Rocks, all according to the outline drawn on the attached Coast and Geodetic Chart No. [illegible] attached hereto and made a part of this Agreement, which Chart shall be utilized for visual clarification of the base line above described.

3. The members of the Eastern Pacific Fisheries Company shall not fish within three (3) miles of the seaward side of the base line as above-described and as delineated on the attached chart, and shall refrain from any such activity until a final determination shall have been made by a Court of Competent jurisdiction as to whether the Shelikof Straits and adjacent waters are international waters or waters within the exclusive jurisdiction of the State of Alaska.

BEST COPY AVAILABLE

Eastern Pacific Fisheries Company shall leave the area as outlined above within a period of 5 days from the signing of this Agreement.

Dated at Kodiak, Alaska, this 19th day of April, 1962.

STATE OF ALASKA

By [illegible]
[illegible] District Attorney

Defendants,

By [illegible]
[illegible]

EASTERN PACIFIC FISHERIES COMPANY

By [illegible]
Captain Mongo [illegible]

APPROVED AND CONSENTED TO

[illegible] 山本久雄
Fleet Commander

[illegible] 峰 [illegible]
Mine Sotashi

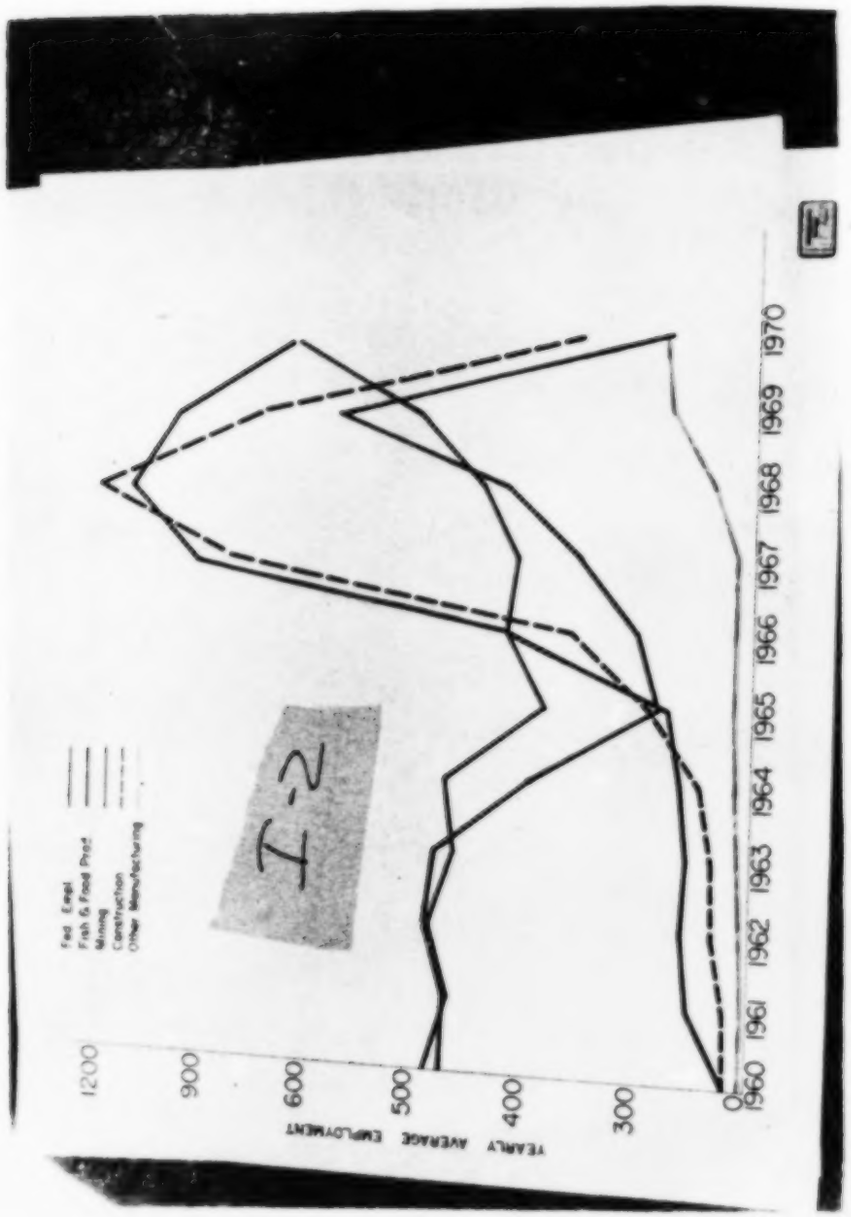
[illegible] 谷島 [illegible]
Higashima Tadao

[illegible] DISTRICT [illegible]

Jan 72 18th

A. M. [illegible]
Clerk of the Superior Court

L. Sisco
Deputy



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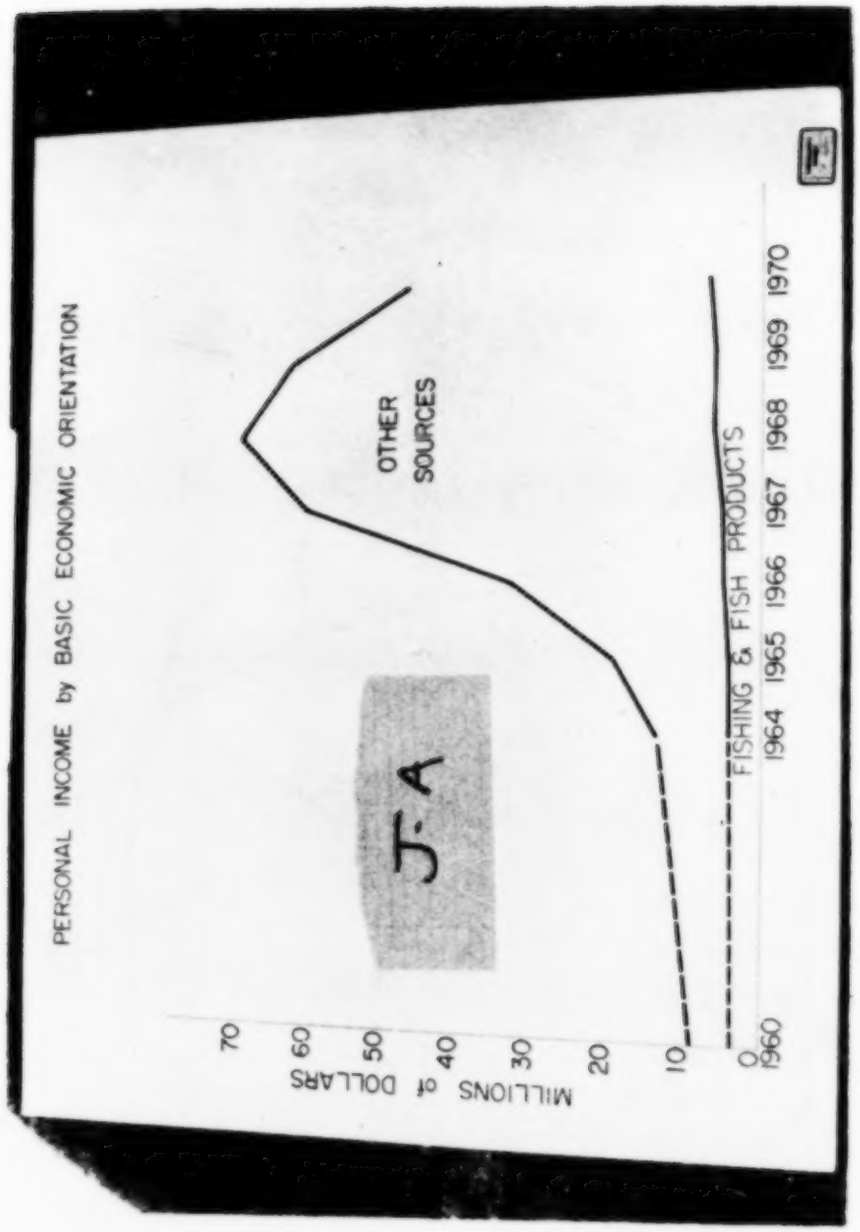

DX JB

ALASKA DEPARTMENT OF FISH AND GAME

CASE REPORT

REGION II

DATE 10/23/70

CARD NO. 1

CASE NUMBER				DEFENDANT'S NAME			SOCIAL SECURITY NO.		
HOM	70	024		DEROSSITT	FRANK	M	542	09	0533
LOCATION ABBREV.	YEAR	NUMBER		LAST NAME	FIRST NAME	MIDDLE			

RESIDENCE	ADDRESS		
☐ 1 RESIDENT ☒ 4 NONRESIDENT ☐ 2 RES MILITARY ☐ 5 NONRESIDENT MILITARY ☐ 3 GUIDE	2434 Albee St.	EUREKA	CA
	STREET	CITY	STATE

SEX	EYES	HAIR	DATE OF BIRTH	WEIGHT	HEIGHT
☒ 1 MALE ☐ 2 FEMALE	☒ 1 BROWN ☐ 2 BLUE ☐ 3 HAZEL ☐ 4 GRAY ☐ 5 BLACK ☐ 6 GREEN	☐ 1 BLACK ☐ 2 BROWN ☐ 3 BLOND ☒ 4 GRAY ☐ 5 BALD ☐ 6 RED ☐ 7 WHITE	07 11 35 (MONTH DAY YEAR)	235 (POUNDS)	6 (FEET) 02 (INCHES)

CARD NO. 2

VIOLATION CODE	COMPLAINT SIGNED BY	TRIAL DATE	VERDICT	TOTAL FINE	NET FINE
21330c	NUTGRASS	MONTH DAY YEAR	☐ 1 GUILTY ☐ 2 NOT GUILTY ☐ 3 APPEAL	DISMISSED (DOLLARS)	(DOLLARS)

SENTENCE								LOCATION COMPLAINT SIGNED
0	0	0	☐ 1 GUILTY ☐ 2 NOT GUILTY ☐ 3 OTHER	07	06	☐ AM ☐ PM	0250	SOLDOTNA
TOTAL DAYS	DAYS SUSPENDED	MONTH		MONTH	DAY		DOLLARS	

CARD NO. 3

OFFENSE CHARGED Used drift net in area closed to drift net CODE HDQ USE LOCATION Cook Inlet

CITED BY Nutgrass CITED DATE 7/13/70 LOCATION Kenai River

FISH OR GAME SEIZED ☐ YES ☒ NO

EQUIPMENT SEIZED ☐ YES ☒ NO

DISPOSITION OF FISH OR GAME

DISPOSITION OF EQUIPMENT

ARRAIGNED BEFORE Magistrate Jess Nicholas ARRAIGNMENT DATE 7/16/70 LOCATION Kenai

PROSECUTING ATTORNEY DEFENSE ATTORNEY

PREVIOUS VIOLATIONS None on record

COMMENTS This case was dismissed because of an error in printing in the regulations (21.330(c)).

SIGNATURE J Nutgrass (A.F.)

DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUPPORT BUILDING, JUNEAU, ALASKA

FFICER'S REPORT
PORTING DISTRICT Soldotna
SION II OFFICER J. R. Nutgrass

ATURE OF VIOLATION

Commercial Fishing in Closed Waters, Southern District, Cook Inlet, Title 5, Chapter 1, Alaska Administrative Code, Section 21.330 (C).

IME AND LOCATION

The violation occurred on July 6, 1970 at approximately 3:30 p.m., 5 to 7 miles inside the Southern District of Cook Inlet in the Third Judicial District.

EFENDANT

Frank M. DeRossitt, wma, dob-7/11/15, height-6'2", eyes-brown, hair-gray, occupation-Fisherman, resident and mailing address-2434 Albee St., Eurika, California, stated that in all the years that he has fished, he has never violated the law.

NVESTIGATION

It was reported by Ed Martin, Senior Protection Officer of Homer, that the "K22" was observed between 5 and 7 miles inside the Southern District. On July 13, 1970 at 8:20 p.m. while patroling the Kenai River, Frank M. DeRossitt was contacted aboard the vessel "K22" and was advised of the violation.

NTERVIEW

None other than with defendant.

HOTOGRAPHS

None

ITATION

Frank M. DeRossitt was given a violation notice to appear in District Magistrate Court in Kenai, Alaska on July 10, 1970 at 1:30 p.m. for Commercial fishing in closed waters.

IOR VIOLATION

None on record

RAIGNMENT

At arraignment held in District Magistrate Court in Kenai, Alaska on July 16, 1970 at 1:30 pm., Frank M. DeRossitt entered a plea of "not guilty" before District Magistrate Jess Nicholas and requested a trial by the court. No bail was set by the court as Columbia Harris Connery assured the court of DeRossitt's appearance.

7-27-70

DISTRIBUTION DATE

DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUBPORT BUILDING, JUNEAU, ALASKA

Page 2
FFICER'S REPORT
PORTING DISTRICT Soldotna
SION II OFFICER J. R. Nutgrass

OSITION

This case is now complete and awaiting trial.

CHMENTS

Violation notice
Complaint

DISTRIBUTION DATE

In the District Magistrate Court of the State of Alaska

[illegible] Judicial District, [illegible], Alaska

State of Alaska

Plaintiff

vs

FRANK M. [illegible]SSITT,

Defendant(s)

Complaint

No. [illegible] Cr.

Title 5, Chapter 1, Alaska Administrative Code, Section 21.3[illegible] (C) - C[illegible]IAL FISH CLOSED WATERS

Complainant, J. R. [illegible]utgrass, Senior Protection Officer, [illegible],

ersonally appearing before me and being duly sworn, states that on or about the 6 day of July, 19 73, at or near Crab Inlet, Southern District, in the Third Judicial District, State of Alaska, Frank M. [illegible]ssitt did unlawfully fish commercially [illegible] a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing.

All of which is contrary to and in violation of Title 5, Chapter 1, Section 21.3[illegible] (C) Alaska Administrative Code and against the peace and dignity of the State of Alaska.

This complaint is based on the personal observation of [illegible] Martin Senior Protection Officer, [illegible] Flagg and [illegible], Area Management Biologist, [illegible].

[illegible]

[illegible]

Sworn to and subscribed before me this 16 day [illegible] 19 [illegible]

Magistrate

JUNEAU

ALASKA DEPT. OF FISH & GAME

VIOLATION NOTICE

De Rossitt Frank M

2434 Alaska [illegible]

Eureka [illegible]

[illegible] 215 [illegible]

Fisherman

[illegible] 35167 Com. Fish

[illegible] 15757

YOU ARE HEREBY NOTIFIED TO APPEAR BEFORE

☒ MAGISTRATE ☐ F & G OFFICE

AT Kenai ON 7/16/[illegible]

FOR VIOLATION OF SECTION [illegible] OF

OFFENSE Drift Fish in Southern District

[illegible]

[illegible]

DX JE

ALASKA DEPARTMENT OF FISH AND GAME

CASE REPORT

REGION II

DATE 10/23/70

CASE NUMBER			DEFENDANT'S NAME			SOCIAL SECURITY NO.		
HOM	70	025	ASK (LAST NAME)	KJARTAN (FIRST NAME)	J (INIT.)	065	26	4607

RESIDENT	ADDRESS		
	4115 Baker Ave., NW (STREET)	SEATTLE (CITY)	WA (STATE)

SEX	RACE	HAIR	DATE OF BIRTH	WEIGHT	HEIGHT
1 MALE	1 WHITE	1 BLACK	02 (MONTH)	190 (POUNDS)	5 (FEET)
2 FEMALE	2 NEGRO	2 BROWN	22 (DAY)		11 (INCHES)
	3 INDIAN	3 BALD	28 (YEAR)		
	4 ORIENTAL	4 GRAY			
	5 MULTI	5 RED			
	6 OTHER	6 BLACK			
		7 WHITE			

ARD NO. 2					
(LAST NAME)	(COUNSEL FOR DEF.)	TRIAL (MONTH)	TRIAL DATE (DAY)	TRIAL DATE (YEAR)	VERDICT
21330a	HUTGRASS				DISMISSED

ARD NO. 3								
(LAST NAME)	(FIRST NAME)	(INITIAL)	(SUFFIX)	(MONTH)	(DAY)	(YEAR)	(DOLLARS)	(COMMENTS)
0	0	0		07	06	----	0250	SOLDOTNA

PRIME CHARGES Used drift net in area closed to drift net (CODE) (MAX. LIFE) LOCATION Cook Inlet

FOUND BY Nutgrass FOUND DATE 7/13/70 LOCATION Kenai River

WARRANT ISSUED Yes Date to John Ishnlna ARRAIGNMENT DATE 7/16/70 LOCATION Kenai

PRIOR VIOLATIONS None on record

DISPOSITION This case was dismissed because of an error in printing in the regulations (21.330(c)).

J. Nutgrass

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUBPORT BUILDING, JUNEAU, ALASKA

SON 3747

OFFICER'S REPORT
POSTING DISTRICT Soldotna

DIVISION II OFFICER J. R. Nutgrass

NATURE OF VIOLATION

Commercial fishing in closed waters. Title 5, Chapter 1, Alaska Administrative Code, Section 21.330 (c).

TIME AND LOCATION

The violation occurred on July 6, 1970 at approximately 3:30 p.m. 5 to 7 miles inside the Southern District of Cook Inlet in the Third Judicial District.

DEFENDANT

Kjartan J. Ask, wma, dob-2/22/28, height-5'11", weight-190 lbs., eyes-blue, hair-black, occupation-Fisherman, mailing and resident address, 4115 Baker Ave., N.W., Seattle, Washington, stated, "I don't know that I was below the line". Ask further stated "How can they tell if a boat is below the line"?

INVESTIGATION

It was reported by Ed Martin, Senior Protection Officer of Homer, that the "Scamp" was observed 5 to 7 miles inside the Southern District. On July 13, 1970 at 7:30 p.m. while patroling the mouth of the Kenai River, Kjartan J. Ask was contacted aboard the vessel "Scamp" and advised of the violation.

INTERVIEWS

None other than with defendant.

EVIDENCE

None

PHOTOGRAPHS

None

CITATION

Kjartan J. Ask was given a violation notice to appear in District Magistrate Court in Kenai, Alaska on July 16, 1970 at 1:30 p.m.

PRIOR VIOLATIONS

None on record.

7-21-70

DISTRIBUTION

DATE

DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUPPORT BUILDING - JUNEAU, ALASKA

Page 2
OFFICER'S REPORT
REPORTING DISTRICT Soldotna

REGION II OFFICER J. R. Nutgrass

ARRAIGNMENT

At arraignments held in District Magistrate Court in Kenai, Alaska on July 16, 1970 at 1:30 p.m., Jartan J. Ask entered a plea of "not guilty" before District Magistrate Jess Nicholas and requested a trial by the court. No bail was set by the court as Columbia Wards Cannery assured the court of Ask appearance.

DISPOSITION

This case is now complete and awaiting trial.

ATTACHMENTS

Violation Notice
Complaint

OFFICER'S SIGNATURE [signature] DATE 7-20-70
PROFESSIONAL ARRIVAL [signature] DATE 7/20/70

WINFAU
LEGION
STATE ATTORNEY
SUPERVISOR

DISTRIBUTION DATE

In the District Magistrate Court of the State of Alaska

TH[illegible] Judicial District, [illegible], Alaska

State of Alaska
Plaintiff
vs
KJARTAN J. ASK,
Defendant(s)

Complaint
No. ____ Cr.
Title 5, Chapter 1, Section 21.330 (C) Alaska Administrative Code - COMMERCIAL FISH CLOSED WATERS

Complainant, J. R. Nutgrass, Senior Protection Officer, ADF&G

personally appearing before me and being duly sworn, states that on or about the 6 day of July, 19 70, at or near Cook Inlet, Southern District, in the Third Judicial District, State of Alaska, Kjartan J. Ask did unlawfully Fish commercially with a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing.

All of which is contrary to and in violation of Title 5, Chapter 1, Section 21.330 (C) Alaska Administrative Code and against the peace and dignity of the State of Alaska.

This complaint is based on the personal observation of Ed Martin, Senior Protection Officer, Loren Flagg and [illegible], [illegible] Biologist, ADF&G.

[illegible]

[signature]

Sworn to and subscribed before me this 16 day of July, 19 70

[signature]
Magistrate

JUNEAU

ALASKA DEPT. OF FISH & GAME
VIOLATION NOTICE

ASK | KTARTAN | J

4115 BAKER AVE N.W.
CITY STATTLE STATE WASH

☒ MALE ☐ FEMALE	2 27 24	5'11	190	BLU	BLK

☐ RESIDENT ☒ NONRESIDENT ☐ ALIEN
OCCUPATION FISHERMAN

F. & G. STATIONS NO. 28404 TIME COMM'N
AUTO VESSEL NO. 26710

YOU ARE HEREBY NOTIFIED TO APPEAR BEFORE
☒ MAGISTRATE ☐ F & G OFFICE
AT KEVAL 7/16/2.1306
☐ TO BE NOTIFIED
FOR VIOLATION OF SECTION 21.330(E) OF
☒ ☐ ☐ ☐ ☐
OFFENSE DRIFT FISH IN
SOUTHERN DISTRICT

DATE 7 TIME
[illegible]

[illegible]
Peter Ask

DX JF

United States Embassy,
Ottawa, Ontario,
October 15, 1957.

Dear Mr. Clark:

I am pleased to transmit to you at the request of the Special Assistant for Fisheries and Wildlife of the Department of State two copies each of Public Law 85-114 approved July 24, 1957 and the regulations issued by the Secretary of the Interior on July 25, 1957 under that law. Public Law 85-114 amends the North Pacific Fishery Act of 1954 by extending the area of the North Pacific Ocean in which the Secretary of the Interior may issue certain fishing regulations. The regulation of July 25, 1957, issued under authority of Public Law 85-114 prohibits salmon fishing by United States nationals except by trolling in certain areas of the North Pacific Ocean.

In connection with the above regulations, I am also pleased to transmit two sets of charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based. The charts were prepared by the Fish and Wildlife Service of the Department of the Interior.

Sincerely yours,

Adolph Dubs
Second Secretary of Embassy

Enclosures

G. R. Clark, Esquire,
Deputy Minister of Fisheries,
West Block,
Ottawa.

ADubs/mjbb

BEST COPY AVAILABLE

DX JG

WILLIAM A. EGAN
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 30, 1962

Honorable George W. Ball
Under Secretary of State
Department of State
Washington 25, D. C.

Dear Mr. Ball:

The State of Alaska has been informed by the Coast Guard that a Japanese mother ship and five catcher boats are sailing for the Kodiak area for the purpose of fishing for herring. According to our information, the Japanese ships are planning to stay three miles from the Kodiak and mainland coasts. In so doing the Japanese obviously take the position that they will be fishing in international waters.

I have been advised that fishing is being conducted in the vicinity of Chirikof Island south of Kodiak, and it appears likely that the fishing operation will extend into Shelikof Strait and perhaps some areas of Cook Inlet. The State of Alaska has claimed jurisdiction over the entirety of these two bodies of water on historical and geographical grounds notwithstanding the usual three mile rule. I am enclosing for your information an opinion issued by the Alaska Attorney General dated December 29, 1959, which sets forth the basis of the State's claim.

The State of Alaska does not wish to cause any international incident by interference with Japanese operations in view of the paramount responsibility of the federal government in the field of foreign policy.

Since this is a matter of serious concern to the State of Alaska, I would appreciate your informing me of what action

Honorable George W. Ball -2- March 30, 1962

the Federal Government intends to take in preventing this foreign fishing fleet from engaging in fishing operations in State waters.

Sincerely,

William A. Egan
Governor

cc: Kirkness
Moody

X

DX JH

file A.G.

APRIL 2, 1962, JUNEAU, ALASKA

HONORABLE GEORGE W. BALL
UNDER SECRETARY OF STATE
DEPARTMENT OF STATE
WASHINGTON 25, D. C.

THIS WILL SUPPLEMENT MY LETTER OF MARCH 30 ON JAPANESE FISHING. MOTHERSHIP OF BANSHU MARU FISHING FLEET HAS BEEN REPORTED BY ALASKA DEPARTMENT OF FISH AND GAME AT 3:00 P.M. APRIL 1 AS BEING 4 MILES OFF UGANIK ISLAND IN SHELIKOF STRAIT AND HER FOUR HERRING CATCHER BOATS AS FISHING OFF THE MOUTH OF UYAK BAY ABOUT FOUR MILES FROM HARVESTER ISLAND. EARLIER REPORTS PLACED MOTHER SHIP WITHIN ONE MILE OF KODIAK ISLAND. ALL ACTIVITIES ARE IN VIOLATION OF ALASKAN FISHERIES LAW. THIS IS A MATTER OF IMMEDIATE AND GRAVE CONCERN TO ALL ALASKANS. WILL YOU NOTIFY ME IMMEDIATELY AS TO PROCEDURE FEDERAL AUTHORITIES INTEND TO FOLLOW. THE STATE CANNOT SIT IDLY BY AND WATCH STATE FISHERIES LAWS OPENLY VIOLATED.

WILLIAM A. EGAN
GOVERNOR

Office of the Governor
phone 6-2546

DX JJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
STATE OF ALASKA,)
Defendant.)

CIVIL NO. A-45-67

AFFIDAVIT OF CHARLES K. CRANSTON

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT.)

I, Charles K. Cranston, Assistant Attorney General for the State of Alaska, being first duly sworn, depose and say:

1. That on December 2, 1971, the State of Alaska received the following response by the plaintiff to the Seventeenth Request for Production of Documents:

Request No. 2: The chart requested by Canada at the Seattle Conference on Coordination of Fisheries Regulations, February 27 through 28, 1957 between the United States and Canada. The chart is described at page 8 of the Summary of Proceedings of the Second Conference on Coordination of Fisheries Regulations between Canada and the United States held at Vancouver, B. C. April 21 through 24, 1959, a copy of pages 8 and 9 in said summary is attached hereto as Exhibit No. B. The summary of proceedings may be further identified as Exhibit 11 to the second deposition of Ronald C. Naab.

Response to Request No. 2: Ozalid copies of documents which may be responsive to this request were located in the office of the National Marine Fisheries Service in Juneau, Alaska. They have been transmitted to the Marine Resources Section, Land and Natural Resources Division of the Department of Justice, where they may be inspected and copied. They could be transmitted to Juneau if the State would prefer to inspect them there. We have

DEPARTMENT OF LAW
OFFICE OF THE
ATTORNEY GENERAL
ANCHORAGE BRANCH
200 N. 5TH SUITE 105
ANCHORAGE, ALASKA 99501
PHONE 272-1952

DEFENDANT'S EXHIBIT
JJ-[illegible]
A-45-67 Civ.

not been able to locate any additional copies of these documents.

2. That on or about December 6, 1971, I inspected in the office of Jonathan I. Charney, at the Department of Justice, Washington, D.C., the documents described in the above response as those which may be responsive to this request.

3. That these documents which I inspected are the documents from which Exhibits GH-1 through GH-12 were copied.

4. That the documents which I inspected are the same charts and overlays which were produced at the deposition of Ronald C. Naab, taken August 20, 1971 and referred to therein as Exhibit 8.

DATED at Anchorage, Alaska, this 26th day of January, 1972.

Charles K. Cranston

SUBSCRIBED and SWORN to before me the place and date above written.

NOTARY PUBLIC FOR ALASKA
My Commission Expires 5-25-75

DEPARTMENT OF LAW
OFFICE OF THE
ATTORNEY GENERAL
ANCHORAGE BRANCH
100 N. ST. SUITE 105
ANCHORAGE ALASKA 99501
PHONE 272-1552

UNITED STATES OF AMERICA,
Plaintiff/Appellant,
v.
STATE OF ALASKA,
Defendant/Appellee.

No. 73-2400
(D.C.# A-45-67)

RECEIVED
JUN 19 9 25 AM '74
CLERK'S OFFICE

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Edward F. Bradley, Jr. counsel for the U.S.A., and good cause appearing, IT IS ORDERED that the issuance, under Rule 41 (a) of the Federal Rules of Appellate Procedure, of the certified copy of the judgment of this Court in the above cause be and hereby is stayed pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari to be made by the U.S.A. hereto, provided such petition is filed in the Clerk's Office of the Supreme Court of the United States on or before June 23, 1974

In the event the petition for writ of certiorari is granted, then this stay is to continue pending the final disposition of the case by the Supreme Court of the United States.

United States Circuit Judge.

90-4-5

DATED: SAN FRANCISCO, CALIF.
June 12, 1974

JUN 18 1974
LAND AND NAT. RES. DIV.

Supreme Court of the United States

No. 73-1888

United States,

Petitioner,

v.

Alaska

ORDER ALLOWING CERTIORARI. Filed December 9, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth ---------- Circuit is granted.

Supreme Court, U. S.
FILED
JUL 20 1974
MICHAEL RODAK, JR., CLERK

NO. 73-1888

IN THE

Supreme Court of the United States

October Term, 1973

UNITED STATES OF AMERICA, *Petitioner*

v.

STATE OF ALASKA, *Respondent*

On Petition For Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

October Term, 1973

NO. 73-1888

UNITED STATES OF AMERICA, *Petitioner*

v.

STATE OF ALASKA, *Respondent*

On Petition For Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION

QUESTIONS PRESENTED FOR REVIEW

This case involves the determination of whether the disputed area of Cook Inlet is an historic bay as that term is applied in Paragraph 6, Article 7, of the Convention on the Territorial Sea and the Contiguous Zone (TIAS No. 5639). The parties and each of the Courts previously deciding this case have agreed that the legal criteria to be applied are contained in a United Nations Study, *Juridical Regime of Historic Waters, Including*

Historic Bays, U. N. Doc. A/CN, 4/143 (1962). (Hereinafter referred to as *Juridical Regime*) And subject to certain qualifications imposed by this Court upon disputes between the Federal Government and individual State Governments, this Court has followed the legal criteria contained in the *Juridical Regime. United States v. California,* 381 U.S. 139, 172 (1965). This Court has also recognized that the application of the concept of historic waters necessarily raises "primarily factual questions" which must be left to the trier of the facts. The *Louisiana Boundary Case,* 394 U.S. 11, 75.[1]

As to the questions presented, Alaska's position is:

1. There was an explicit claim to Cook Inlet as well as a sufficient and continuous exercise of sovereignty to establish historic title to Cook Inlet as inland waters.

2. While the law is not authoritatively settled by this Court as to whether toleration or acquiescence by foreign nations is the proper requirement for the emergence of historic title, the trial court correctly held that the question was immaterial, since, under the facts, Alaska had proved acquiescence—the higher standard.

3. Since this Court has held that the Federal Government cannot, under the guise of conducting

1. The fact issues involve a determination as to whether the three criteria deemed necessary by the *Juridical Regime* to support historic bay status have been met. These are: (1) has the state claiming the right exercised sovereignty over the area; (2) has there been a continuity of the exercise of sovereignty; and (3) have foreign states acquiesced in the exercise of sovereignty. *U. S. v. Louisiana,* 394 U.S. 11, 23-24 (1969).

foreign relations, undertake the contraction of the territorial limits of a state,[2] the District Court properly found that the so-called disclaimers were not controlling in this case in which the historic evidence was clear beyond doubt.

4. This Court has held that the application of the doctrine of historic title "raises primarily factual questions,"[2a] and accordingly the District Court properly addressed itself to these questions. There being no claim that the findings are clearly erroneous, they should not be set aside.

REASONS WHY THE PETITION SHOULD NOT BE GRANTED

1. *Cook Inlet is not an historic territorial sea.*

The decision of the lower courts is in accord with prior rulings of this Court in *Louisiana* and *California,* as well as in accord with recognized principles of international law. Contrary to Petitioner's argument, neither this nor any other court has ever held, with respect to *bays* that are landlocked and necessarily inland, that only proof of interference with the right of innocent passage of foreign vessels can give rise to historic title to inland waters.

Petitioner's only authorities are passing footnote references by this Court[3] to the *Juridical Regime* wherein the possibility of historic territorial seas was noted. Doubtless such a possibility exists in the case of certain kinds of open waters.

2. *United States v. Louisiana,* 394 U.S. 11, at p. 77.

2a. The *Louisiana Boundary Case,* 394 U.S. at 75.

3. *United States v. Louisiana,* 394 U.S. at 24 n. 28, 25-26 n. 30.

Here, of course, we are dealing with a bay whose waters are completely enclosed by the lands of Alaska.[4] Thus, the trial court found that because of the unique geographic characteristics of Cook Inlet—its landlocked status, its resemblance to a large inland lake, the fact that while in it a mariner instinctively feels himself within the jurisdiction and domain of Alaska, the fact that it is vital to the economic interests and well being of those who inhabit its shores, and the fact that it has never been a waterway for intercourse between nations—it would have been unnatural had not those inhabiting its shores exercised sovereignty over its waters.

As to bays, the *Juridical Regime* states at Paragraph 163:

> ". . . the dominant opinion, as gathered from the statements assembled in the memorandum [*Historic Bays,* Document A/Conf. 13/1] (Exhibit 52), seems to be that 'historic bays' the coasts of which belong to a single state are internal waters. This was to be expected considering that it is generally agreed that the waters inside the closing line of the bay are internal waters and that the territorial sea begins outside that line."

In the treatise, *Historic Bays,* it is stated:

> "It is always necessary to remember in dealing with 'historic waters,' the essential point that those waters are internal waters. This fact explains many aspects which would be otherwise difficult to grasp. The theory was originally evolved to apply to 'bays,' and is still referred to as the theory of 'historic bays'

4. For a more complete description of these waters see Findings of Fact 4-15, incl. (pp. 22a through 24a, Appendix C, Petition for Writ of Certiorari.)

> because it was never envisaged that it might apply except in areas which, by reason of their configuration, are generally not used as major international routes of transit." *Historic Bays* 117.

The Convention on the Territorial Sea and the Contiguous Zone itself refutes Petitioner's argument that Cook Inlet is territorial sea but not inland water. In Article 7, the Convention addressed itself to the question of what precise mathematical distances across the entrance points to bays would be required to qualify as inland waters.[5] It was from the seaward edge of these inland waters that the territorial sea extended. When, in Paragraph 6 of the Article, the Convention excepted historic bays from the mathematical requirements it necessarily declared that the waters inside the natural entrance points to historic bays were inland waters from whose seaward edge the territorial sea extended. This, we submit, is the only sensible meaning to be accorded Article 7 and Paragraph 6 thereof. When the lower courts found Cook Inlet to be an historic bay, the holding was inevitable that Cook Inlet was internal waters.

There is absolutely no evidence in the record, and Petitioner has cited none, that shows that either the United States or the State of Alaska has ever permitted or recognized the right of innocent passage of foreign vessels in the disputed area of Cook Inlet. Passage is defined as including the "stopping and anchoring, but only insofar as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress." (See P. 11, United States' Brief in Court of Civil Appeals for the Ninth Circuit). Every inference in the record, borne out by the express testimony of numer-

5. *Louisiana Boundary Case,* 394 U.S. at 22 n. 22.

ous witnesses, is to the effect that the practice of foreign vessels stopping and anchoring within the confines of lower Cook Inlet would be prohibited.[6] The District Court, it will be noted, relied upon this evidence and expressly found that "Cook Inlet is not and never has been a waterway for intercourse between nations."[6a]

The presence of a few foreign shipping vessels in Cook Inlet en route to Anchorage is no more evidence that Cook Inlet is a territorial sea than the presence of a thousand foreign shipping vessels in San Francisco Bay is evidence that San Francisco Bay is a territorial sea. As Colombos stated in his well known treatise, *The International Law of the Sea,* the interests of international commerce and navigation have given rise to an international, modern custom of allowing free access of foreign shipping vessels to internal waters and access "should not be refused except on compelling national grounds." (6th Rev. Ed. [1967] pp. 87-88)

In the District Court, Petitioner's main thesis was that there had been no claim of sovereignty of any kind. When

---

6. For example, in Skerry Dep., p. 29, we find:

"Q. Would you have required, for instance, if a foreign vessel wanted to fish Cook Inlet with gear, would they have been required, also, to register?

A. He wouldn't have been allowed in there in the first place. He could have come in Force Majeure or something of this sort. But to fish, no."

And see Studdert Dep., p. 22, where Studdert, another federal official, testifying with regard to foreign vessels stated:

"Q. And why would you have gotten the vessel out of there, Mr. Studdert?

A. Well, if it was a foreign ship, why you would not only get her out, but you would seize the ship, you know, if you could."

6a. Finding 10, P. 23a, Appendix C, Petition for Writ of Certiorari.

faced with overwhelming evidence to the contrary, Petitioner shifted its position upon appeal and now implicitly admits that the three essential requirements for historic title have been proved, albeit historic title to territorial sea rather than historic bay. In shifting its position, the attorneys for the United States would now have this Court create from whole cloth a novel legal entity—an historic, necessarily inland, territorial sea bay. This would appear to be a self-contradictory kind of bay and Cook Inlet would be the first of its kind in all of jurisprudence. For the United States has cited no case, and there is none, where an historic, geographically inland, water bay has been declared to be an historic territorial sea in the sense that these terms are currently used. Such a creation is surely a figment of imagination.

1.a. *There has been an explicit claim to Cook Inlet as internal waters.* The claim, we submit, is found in the "variety of Acts of Congress, Executive Orders, agency regulations governing fishing in the waters of Alaska" which Petitioner recognizes,[7] but then ignores. The language of the various statutes and proclamations (The Alien Fishing Act, The White Act, The Southwestern Alaska Fisheries Reservation) refers to waters of Alaska under the jurisdiction of the United States. This brings us to the fundamental question: Was jurisdiction (or sovereignty) asserted by the United States over Cook Inlet as waters of Alaska? To answer the question, it is necessary to trace the history of various statutes that have been enacted with respect to the waters of Alaska. It is necessary also to depict the claims to Cook Inlet at the time each statute and regulation was promulgated.

---

7. P. 13, Petition for Writ of Certiorari.

R.S. 1956 and the Kodiak Case. The earliest statute, Article 1956, was involved in the *Kodiak* case.[8] It provided that "no person" shall kill otter or other fur-bearing animals "within the limits of Alaska territory or in the waters thereof." Thus it was that the Court in the *Kodiak* case was faced with the same contention now urged by the United States, to wit: that since the defendant had allegedly killed fur-bearing animals more than 3 miles from the shoreline of Cook Inlet, the statute was not applicable, the phrase "in the waters thereof" being construed to mean a distance of 3 miles from the shore of Cook Inlet. As we see it, this is precisely the contention now urged by the United States.

The Court said:

"The contention is not a valid one.

* * *

> . . . it can hardly be claimed that any portion of Cook's Inlet is 'high seas,' within the accepted meaning of the phrase, for it is well landlocked by islands extending from Kodiak Island to Cape Elizabeth, on the east, and can only be entered by coming in near some of these islands, or by the way of Shelikof straits. [53 Fed., p. 128]"

Having taken the unique geographical status of Cook Inlet into consideration, the Court made clear that its basis for jurisdiction rested upon assertions of sovereignty over Cook Inlet by the United States.

The Alien Fishing Act, The Southwestern Alaska Fisheries Reservation and The White Act. With this precedent before it—a clear-cut judicial holding that Cook Inlet was water over which the United States had asserted

8. 53 Fed. 126 (D.C. Alaska 1892).

jurisdiction—Congress enacted The Alien Fishing Act in 1906[9] and The White Act in 1924.[10] The operative words in The Alien Fishing Act were "waters of Alaska under the jurisdiction of the United States," while in The White Act the key words were "any of the waters over which the United States has jurisdiction." Both statutes have substantially the same language and both have language almost identical with Article 1956.

During the next 53 years, until Alaska gained Statehood, the Secretary of Commerce and later the Secretary of Interior, exercised their statutory authority to regulate the "waters of Alaska," and annually defined Cook Inlet as including "*all* adjoining waters north of Cape Douglas and west of Point Gore (including the Barren Islands)."[10a] (Emphasis added)

To say that these executive regulations are not clear is to defy the English language, particularly when their judicial and legislative precedents are taken into account. To claim that these regulations were not brought to the attention of all foreign nations is to ignore the fact that each year, for more than three decades, they were published and distributed throughout the world.

We suggest that, if today the author of the regulations was given the chore of asserting United States sovereignty

9. The Alien Fishing Act excluded aliens from the waters in question.

10. The White Act granted the Secretary of Commerce and later the Secretary of Interior the power to "set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction."

10a. Other areas in Alaska such as Bristol Bay were defined to include "territorial coastal and tributary waters". The absence of these words in the definition of Cook Inlet, by contrast, makes unmistakably clear the meaning of the regulation in question.

over Cook Inlet, he would have difficulty in finding clearer and more precise words than the words "all adjoining waters north of Cape Douglas, etc."

1.b. *There was the actual requisite assertion of sovereignty over Cook Inlet.* The principles applicable to the exercise of sovereignty are best summarized in the *Juridical Regime* where its authors adopted the argument of Norway in *United Kingdom v. Norway*:

> "It cannot seriously be questioned that in the application of the theory of historic waters, acts under minicipal (sic) law on the part of the coastal state are of the essence. Such acts are implicit in an historic title." 93.

Consistent with that statement, the District Court found that Russia exercised such sovereignty over Cook Inlet and that all of it fell under exclusive Russian dominion by the early 1800's;[11] that in the enforcement of laws *applicable only to waters of Alaska under the jurisdiction of the United States,* agents of the United States either arrested or boarded the following American vessels in the disputed area: the KODIAK, LETTIE and JENNIE in 1892; the OLGA and MARY ANDERSON in 1893; the NEW ENGLAND and ZAPORA in 1924;[12] found continuous patrolling of and numerous boardings within the disputed area by the United States agents under The White Act and The Alien Fishing Act;[13] and it found six arrests of United States citizens in the disputed area,

11. Finding 18, p. 25a, Appendix C, Petition for Certiorari.

12. Findings 22-39, pp. 26a-30a, Appendix C, Petition for Certiorari.

13. Findings 40-47, pp. 30a-33a, Appendix C, Petition for Certiorari.

all under regulations which by their terms were applicable only to waters of Alaska under the jurisdiction of the United States.[14]

Nevertheless, Petitioner argues that enforcement activity with respect to *American vessels* and *citizens* is irrelevant in establishing historic title under international law. Petitioner again ignores the *Juridical Regime*:

> "This does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken." *Juridical Regime* 99.

And Petitioner also ignores the undisputed evidence that there was indeed enforcement activity and the exercise of United States and Alaska sovereignty against *foreigners.* The record shows that sovereignty was asserted against Japanese fishermen (through the seizure of the BANSHU MARU);[15] the submission of the Gharrett-Scudder line, depicting all of Cook Inlet as inland waters, to the Canadian Government and its apparent acceptance thereof;[15a] the wide publication and distribution throughout

14. Findings 49-56, pp. 33a-35a, Appendix C, Petition for Certiorari.

15. It was the lack of this type of enforcement by Florida state officials which the Special Master found significant in the *Florida* case. P. 63a, Appendix F, Petition for Writ of Certiorari.

15a. For a more complete discussion of the Gharrett-Scudder Line, see pp. 14-A and 15-A, Appendix A, Brief of Alaska, Appellee, U.S.C.A. Ninth Circuit.

much of the world of federal laws and regulations banning aliens from fishing in Cook Inlet (The Alien Fishing Act); the openness, notoriety and continuity of both federal and state patrols that had continued uninterruptedly since 1906 and since the enactment of The White Act; and in the face of all of this, the complete absence of any type of protest (except the ineffectual and repudiated Japanese note) by any foreign nation against the continued exercise of sovereignty over Cook Inlet.

1.c. *The lower courts properly took into account all past events.* Petitioner, we believe, is wrong in criticizing the lower courts' reliance upon events occurring subsequent to the time when historic title had already ripened. This Court, in *Louisiana,* has recognized the impreciseness of the doctrine of historic title and necessarily understood the impossibility of pinpointing the minute and hour when historic title matured. The lower courts clearly acted with propriety when they pointed to the consistent and continuing assertions of sovereignty that lasted more than half a century. The continuing chain of jurisdiction is the essential fact rather than finding the exact moment historic title ripened.

1.d. *The District Court correctly examined all activities pursued by the Russians.* The District Court did not rely upon the isolated act of a private citizen. It is historic fact that Russian fur traders were acting as agents of the Russian Government, and as may still be the case today, there was little private initiative in or outside of Russia that did not have governmental sanction. Petitioner also ignores other Russian activity dealt with at length by the District Court.[16]

16. Findings of Fact 17-21, incl., Appendix C, pp. 25a and 26a, Petition for Writ of Certiorari. See also the testimony of historians DeArmond and Hunt, R. 520-570; 474-518; and finally Emperor Alexander's Ukase of 1821 and the correspondence of the United States Ambassador in St. Petersburg to the State Department with regard to the 1824 treaty and the recognition of Russian claims to occupied bays, which necessarily included Cook Inlet occupied by four Russian settlements as early as 1821, Ex. X, R. pp. 243-244, Ex. Y, R. p. 154.

1.e. *The lower court correctly assessed the significance of past Executive action taken pursuant to Congressional mandate.* It is true that the lower courts relied upon actions of various departments of the Executive Branch; but we disagree that the actions of the Secretaries of Interior and of Commerce are entitled to little weight when in all instances they were exercising an express mandate given them by Congress to define the waters of Alaska and issue regulations strictly enforcing and controlling all fishing therein and excluding aliens therefrom.

1.f. *State acts of sovereignty were also properly considered.* The lower courts, unless they disregarded this Court's holding in *Louisiana,* could not have failed to consider the action taken by the State of Alaska against Japanese fishermen.[17] And to say that the Shelikof Strait incident involved only an area 75 miles from Cook Inlet is an unnecessarily narrow, if not a distorted, view of the evidence. With the knowledge of the Japanese Government (although later repudiated by it), the Japanese fishermen agreed not to fish in an area which was mapped and which included Cook Inlet. In subsequently protesting the State seizures, the Japanese Government mentioned Cook Inlet as well as Shelikof Strait. (Ex. II) The only reason the Alaska officials did not seize the Japanese vessels in Cook

17. See Special Master's Report in *Florida,* p. 3, Appendix F, Petition for Writ of Certiorari, wherein he also followed this Court's teachings in *Louisiana* and thus examined activity by Florida state officials.

Inlet was that they were not apprehended until they left Cook Inlet and came to rest in Shelikof Strait.

1.g. *The enforcement actions were and are relevant.* It is true many of the enforcement actions resulted in acquittals or dismissals, rather than the imposition of sanctions. If the dismissals had been based upon lack of jurisdiction the enforcement actions would truly be of dubious value. But to challenge their validity when the charges were not proved, but vigorously asserted, has no more logic than a challenge to the validity of any criminal statute because each year many defendants indicted thereunder are not convicted.

2. *The evidence was clear beyond doubt and largely undisputed that foreign nations have acquiesced in claims of sovereignty over Cook Inlet.*

The courts below did not depart from this Court's decisions in *United States v. California, supra,* and *United States v. Louisiana, supra.* On the contrary, the lower courts expressly recognized and relied upon this Court's ruling in *Louisiana* that, while principles of international law would be adopted in resolving domestic controversies of this sort, the Federal Government would not be permitted to distort those principles, under the guise of exercising power over foreign relations, and to deny the effect of past events. 394 U.S. at 77. The lower courts also noted this Court's admonition in *California* against an impermissible contraction of a state's territorial limits. *United States v. California,* 381 U.S. 139 at 168.

The line between "acquiescence" and "toleration" is a difficult one which this Court has never found necessary to draw, and this Court has never specified what particular acts of foreign nations are required. But neither this Court

nor any other court has ever held that nations must *expressly* approve another nation's claim of sovereignty before the latter's historic title matures. Any such requirement would be tantamount to requiring a treaty between nations for the creation of historic title. If this were so, the whole concept of historic title would become meaningless and there would be no necessity for requiring a continuous claim of sovereignty over a long time period. In approaching this question, the District Court said:

> "The final requirement for establishing historic title is the attitude of foreign nations. The precise attitude required has been defined by some as acquiescence and by others, perhaps most, by toleration. The United States Supreme Court has used language which indicates that the higher standard, acquiescence, is required. The distinction is immaterial in this case since, as a matter of law, the requirement has been satisfied under the higher standard of acquiescence. Under the finding set out above, the community of nations has acquiesced, clearly beyond doubt, in the emergence of historic title in the waters in dispute."[18]

The District Court found no nation had protested Russia's exercise of exclusive dominion over Cook Inlet; that despite the worldwide distribution of regulations containing a mandate for their enforcement, no nation had protested the United States' enforcement of The Alien Fishing Act, The Southwestern Alaska Fisheries Reservation or The White Act over Cook Inlet; and that Canada accepted the placement of the Gharrett-Scudder Line and its inclusion of Cook Inlet as inland waters of the United States. It found the rare occasions of individual Canadians fishing for halibut in Cook Inlet—only two undetected occurrences before Statehood, and only five undetected

18. Pp. 51a-52a Appendix B, Petition for Certiorari.

vessels thereafter—so small as to be *de-minimus.*[19] It found the Japanese response to the arrest by Alaskan officials of the BANSHU MARU in 1962 to be acquiescence in that no Japanese citizen or vessel has ever again fished in the disputed area once the Japanese fishing company with the consent of the Japanese Government agreed with Alaska not to fish in Cook Inlet.[20] Lastly, the Court found that the lack of foreign fishing in the disputed area an area so clearly the subject of United States jurisdiction and control, constituted foreign acquiescence in that jurisdiction.[21]

The District Court carefully applied the rules contained in the *Juridical Regime* as to the attitude of foreign nations. The *Juridical Regime* quotes with approval an expert in the international law of bays, Bourguin, who supports the theory that the attitude required of foreign nations is that of acquiescence. The study states at Paragraph 109:

> "In such cases the question to be asked is not whether the other states consented to the claims of the coastal state but whether they interfered with the actions of that state to the point of divesting it of the two conditions required for the formation of historic title.
>
> Obviously only acts of opposition can have that effect. So long as the behavior of the riparian state

19. Findings 92-101, Appendix C, pp. 43a-44a, Petition for Writ of Certiorari.

20. Finding 99, p. 44a, Appendix C, Petition for Writ of Certiorari. Consider also the undisputed evidence that, although Japanese fishermen have since fished in other waters near Alaska, they have never ventured into either Cook Inlet or the Shelikof Strait. P. 18a, Appendix B, Petition for Certiorari.

21. Finding 102, p. 45a, Appendix C, Petition for Writ of Certiorari.

> causes no protest abroad, the exercise of sovereignty continues unimpeded. . .
>
> The absence of any reaction by foreign states is sufficient."[22]

3. *The disclaimers are unconvincing.*

The alleged disclaimers now urged by Petitioner reach a level of cynicism that is not becoming a powerful Federal Government. Nor are they convincing when it is remembered that (1) the first one was a letter written by one lawyer in one bureau to another lawyer in a different bureau; and (2) all the other disclaimers, drafted subsequent to this litigation, were authored or initiated by lawyers interested in the outcome of this litigation.

4. *In any event, the disclaimers are not controlling.*

Perhaps more clearly than anything else, the so-called disclaimers demonstrate the wisdom of this Court when, in *California,* it rejected the argument that disclaimers of all kinds and character are always to be given conclusive effect.

The District Court accepted Petitioner's view that, in the face of the disclaimers, Alaska's burden was that of proving the three requirements for historic title by evidence "clear beyond doubt." When this evidence is considered as a whole, it is likewise understandable why, in the lower courts, Petitioner did not claim that the District Court's findings were clearly erroneous.[22a]

22. On this point, the Japanese protest to the BANSHU MARU arrest was insufficient to divest Alaska of its historic title, since in the face of continuing sovereignty a simple and single protest will not suffice. *Juridical Regime, Paragraphs* 112-115.

22a. Whatever the burden of proof—whether it be clear beyond doubt or some lesser standard—it is the initial responsibility of the

5. *The District Court properly exercised jurisdiction to resolve this dispute.*

As Respondent has attempted to demonstrate, the lower courts did not depart from prior decisions of this Court with respect to foreign relations. Indeed, Judge von der Heydt expressed his concern for judicial restraint and recognized that the conduct of foreign relations is constitutionally vested in Executive and Legislative Branches of the United States Government.[23] But also he realized that this and other federal courts have traditionally exercised jurisdiction to resolve fundamental law questions and basic fact issues between State and Federal Governments.[24]

He candidly stated, under the facts and circumstances of this case, that he saw no merit in the contention that a decision here in favor of Alaska would interfere with the conduct of foreign relations.

And the basis of his reasoning seems clear. This Court is not asked to give credence to the extravagant claims of other nations to territorial sea, but only to apply fundamental principles of international law which are, or should be, recognized by all nations. This the Court has done before, without apparent harm to our country's relations with other nations.

---

trial court to evaluate the witnesses, appraise the evidence and make findings accordingly. These findings cannot be set aside by the Appellate Court unless they be found clearly erroneous. *Carlson v. Naddy*, 181 Minn. 217, 232 N.W. 3 (1930), *Taylor v. Bunnell*, 133 Cal. App. 177, 23 P.2d 1062 (1933).

23. Findings of Fact 21, p. 52a, Appendix C, Petition for Writ of Certiorari.

24. Findings of Fact 22, p. 52a, Appendix C, Petition for Writ of Certiorari.

Although Alaska concedes that this case has domestic consequences of some magnitude, Petitioner's prediction that Cook Inlet will yield 1.6 million barrels of oil, etc., is rather naive. Hoping that Petitioner's optimism will prove justified, nevertheless, Respondent knows that Cook Inlet, when finally explored, may not yield a single barrel of oil or gas.

But the point is this. The fact that here at stake may be a billion dollars, furnishes no justification for Petitioner's request that this Court favor one governmental entity over another.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should not be granted.[25]

Respectfully submitted,

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July 1974

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25. Attached as Appendices A and B are the Reply Brief and Supplemental Brief filed by Alaska in United States Court of Appeals for the Ninth Circuit. In these briefs will be found a more complete exposition of Alaska's arguments and review of the record in this case.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Respondent's Brief in Opposition has been forwarded to counsel for Petitioner, Robert H. Bork, Solicitor General, Wallace H. Johnson, Assistant Attorney General, Gerald P. Norton, Assistant to the Solicitor General, Bruce C. Rashkow and Edward F. Bradley, Attorneys, Department of Justice, Washington, D.C. 20530, this _____ day of July, 1974, by placing the same in the United States mail, correctly addressed and stamped.

Thomas M. Phillips

APPENDIX A

No. 73-2400

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellant,*
v.
STATE OF ALASKA, *Defendant-Appellee.*

On Appeal From The United States District Court For The District of Alaska

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No. 73-2400

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellant,*

v.

STATE OF ALASKA, *Defendant-Appellee.*

On Appeal From The United States District Court For The District of Alaska

---

BRIEF FOR THE STATE OF ALASKA, APPELLEE

ISSUES PRESENTED FOR REVIEW

The State of Alaska, Appellee, has a different position from that of Appellant as to what issues are now to be reviewed by this Court. Appellant has stated, and correctly so, that the parties are in agreement as to the law in that there are three legal requirements for establishing historic title to the disputed water area (pp. 6 and 7, Appellant's Brief). It follows that this is and was primarily a *fac:* controversy between the parties. To the extent that the United States has dealt with the facts in its brief, it has merely reiterated the factual contentions which it urged upon the trial court. Those contentions were sharp-

ly contradicted by the State of Alaska, and the trial court made its findings in the State's favor after due consideration of hundreds of documents, the testimony of many live witnesses, including four experts presented by the State and over thirty depositions offered by one side or the other.

1. The *primary* issue, as Alaska sees it, is whether the trial court was "clearly erroneous"[1] in finding that there was clearly proved beyond doubt:

a. An effective exercise of authority or sovereignty over the disputed waters by Alaska (after Statehood), the United States (prior to Alaska's Statehood), and Russia. (See Conclusions 14, 15, 16 and 17; R. 3805-3806); and

b. A continuity of the exercise of such authority. (See Conclusions 18 and 19, R. 3806); and,

c. With the acquiescence of foreign nations. (See Conclusion 20; R. 3806-3807)

Thus, while in its brief the United States apparently contends that there was some evidence which points to contrary findings and other evidence which it claims was legally irrelevant and should not have been considered, the United States does not meet the burden of establishing that there was no substantial evidence to support the lower court's ruling or of showing that the Findings below were clearly erro-

1. Unless the District Court's Findings are clearly erroneous, they must be upheld on appeal. Rule 52(a) F.R.C.P.; *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948); *Wilson v. United States*, 100 F.2d 552 (9th Cir. 1938); *Fluor Corp. v. United States ex rel. Mosher Steel Co.*, 405 F.2d 823 (9th Cir. 1969).

neous or irrelevant. We shall attempt to deal with these significant failures of Appellant in Part One of the Argument.

2. The *second* issue before this Court is whether Alaska could have proved the exercise of sovereignty over Cook Inlet only by proving an interference with the innocent passage of foreign vessels through the disputed area. This issue, which arises out of an improper and narrow construction of the first of the three requirements named above, was not seriously argued below and even represents an admission by the United States that Cook Inlet is an historic bay, albeit it claims the waters are territorial and not inland. No real authority has been cited for this novel proposition. We shall deal with this in Part Two of Appellee's brief.

3. The *third* and final issue raised in this appeal is whether the lower court in the light of so-called disclaimers of historic title by the United States, correctly applied the proper rule on quantum of proof, i.e. the "clear beyond doubt" rule or "preponderance of evidence" rule. This will be dealt with in Part Three herein.

STATEMENT OF THE CASE

Appellant, United States of America, has correctly stated the proceedings and the result in the district court.[2]

2. The disputed area is the water underlying between the line designated "T" on Exhibit "A" to the district court judgment and the line designated "SL" on Exhibit "B" to the district court judgment. (R. 3813-3815).

So far as the factual evidence is concerned, Alaska directs the attention of this Court to the Findings of Fact and Conclusions of Law. (R. 3777-3810). They are unusually detailed, clear, precise and, in all relevant instances, supported by appropriate reference to the supportive evidence. They will not be repeated here, although we shall refer to them as we discuss the points that follow.

BASIC LEGAL BACKGROUND OF CONTROVERSY

The principles governing the apportionment of subsurface resources between a littoral state and the United States have been established in a series of United States Supreme Court decisions, known informally as the tideland (or submerged land) cases. Since they are well summarized in the lower court's Opinion (pp. 2-6, incl.) and not seriously contested here, Appellee will attempt only a brief summary at this point. Our objective, of course, is to demonstrate the significance of the controlling evidence which we hereinafter discuss.

In response to the first tidelands decision, *United States v. California,* 332 U.S. 19 (1947), vesting exclusive title in the United States to the subsurface resources beneath the three mile territorial sea, Congress enacted the Submerged Land Act of 1953. Through this Act, Congress granted to coastal states (including, subsequently, Alaska upon reaching Statehood) exclusive rights to subsurface resources located beneath the water area identical to the territorial sea. It also granted identical rights to the subsurface resources located beneath inland waters. Since the term "inland waters" was not defined in the Act, it

was left to the Supreme Court in the second California decision, *United States v. California,* 381 U.S. 139 (1965), to give meaningful and judicial interpretation to the term. The court adopted the definition of inland waters set forth in terms of international law in the Convention of the Territorial Seas and the Contiguous Zone. (T.I.A.S. No. 5639).

The rule concerning juridical bays, found in Article 7 of the Convention, is not applicable to Cook Inlet,[3] and Alaska does not contend that Cook Inlet is a juridical inland bay. Paragraph 6 of Article 7 of the Convention, however, states that "the foregoing provision shall not apply to so-called 'historic' bays. . ."

Thus the lower court came to the crux of this controversy. It analyzed the problem as follows:

> "If lower Cook Inlet is an historic bay within the meaning of the Convention, that body of water is thus inland water within the meaning of the Submerged Lands Act, with the result that the State of Alaska would have exclusive rights to the subsurface resources." (P. 3, Opinion).

The parties are agreed that there are three requirements. These have been set forth and defined in an exhaustive study recommended by the International Law Commission under the auspices of the United Nations. *Juridical Regime of Historic Waters, Including Historic Bays (Juridical Regime)* (App. p. 10A, Appellant's Brief).

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3. One of the requirements for a juridical inland bay is that the distance between the natural entrance points must not exceed twenty-four miles. The distance between these points in Cook Inlet is approximately forty-seven miles.

The three requirements, approved by the United States Supreme Court, in *United States v. Louisiana,* 394 U.S. 11, 23 (1969), are (1) the exercise of authority over the area by the state claiming the historic right; (2) the continuity of this exercise of authority; and (3) the attitude of foreign states.[4]

We are now in a position to discuss the lower court's Findings and the supporting evidence.

PART ONE

I.

THE DISTRICT COURT CORRECTLY FOUND UPON UNCONTRADICTED AND AMPLE EVIDENCE THAT SOVEREIGNTY HAS BEEN AND WAS EXERCISED OVER COOK INLET.

A. Geographic and Economic Characteristics of Cook Inlet.

Among those water areas dealt with in the tideland cases, Cook Inlet is unique. As a clearly defined, well-marked indentation, Cook Inlet is completely surrounded by the lands of Alaska so that it contains landlocked waters and geographically resembles a large inland lake. (Findings 1-8, incl.; R. 3778-3779).[5] It is well marked

4. For a more complete statement of the requirements, see the lower court's Opinion quoting the *Juridical Regime.* Note also the modifications of those requirements in the context of a domestic dispute between state and federal governments. (Pp. 4-6, Opinion).

5. When, hereinafter, reference is made to particular Findings, the Court's attention is also invited to the supporting evidence cited in the Finding itself. Therefore, reference to such evidence is sometimes omitted in Appellee's brief.

by prominent headlands inside of which, so the undisputed evidence showed, a mariner instinctively feels himself within the jurisdiction and domain of Alaska. (Finding 11; R. 3779-3780).[6] From the beginning of recorded history, according to the testimony of three other distinguished experts,[7] Cook Inlet has been vital to the economic interest and well-being of those persons inhabiting its shores; first, because of the fur trade, then fishing, and more recently, mining and petroleum activity. It has never been a waterway for intercourse between nations, but, on the contrary, all of Cook Inlet's waters have been and are such that at all times they have been easily patrolled and protected by the government entity which controlled its shores. (Finding 13; R. 3780).

While these facts clearly distinguish Cook Inlet from those waters involved in other submerged lands cases, Alaska does not contend that standing alone they are sufficient to satisfy the three controlling criteria for the establishment of an historic bay. But neither are these facts irrelevant. They led the trial court to find—and properly so—that the geographic and economic chacteristics of Cook Inlet are such that it would have been un-

6. Mitchel P. Strohl, currently the registrar and lecturer in political science at the American College in Paris, France, and formerly a Commander in the United States Navy, retiring after 22 years of active service, testified as follows:

> "Q. All right, Professor, would you state what the reasons are for your opinion [that Cook Inlet is a necessarily inland body of water]?
>
> A. I think, sir, that these fall into about six categories: The configuration of the shore; secondly, the concept of a landlocked body; third, the matter of entry, then the category of tides; fifth, this would be the weather, and finally, the navigation aids, I think about in that order." (Tr. 465).

7. Two historians and an economist. *Infra.*

natural had not the inhabitants of its shores, with the acquiescence of foreign nations, exercised continuous sovereignty over its shores and waters from the earliest times forward. (Finding 4, R. 3778). And the Court further found, upon ample evidence that, had not the Cook Inlet fisheries been so controlled, the citizens of the United States and Alaska would have suffered disastrous effects through the loss and dissipation of these valuable fisheries. (Finding 14, R. 3780).

B. Exercise of Russian Sovereignty.

Now, turning to the heart of this controversy—history—the Court found that from an historic standpoint all of Cook Inlet fell under exclusive Russian dominion by the early 1800's. Two distinguished historians, Mr. Robert DeArmond and Dr. William Hunt, testified at length concerning the precise nature and acts of Russian sovereignty, as well as subsequent acts of sovereignty exercised by the United States. (DeArmond testimony, Tr. 520-570; Hunt testimony, Tr. 474-518).

Russia which had earlier established at least four settlements on the shores of Cook Inlet recognized the importance of Cook Inlet's fisheries in 1821. Emperor Alexander then issued an edict (Ukase) which granted exclusively to Russian subjects the pursuits of commerce and fishery along the entire northern coast of North America, including Cook Inlet. The edict which forbade foreign vessels from approaching within 100 Italian miles of the coast was never questioned or held ineffective as to Cook Inlet. (Exhibits W, X, Y; Findings 17-19, 21; R. 3781-2). Even before then, Russian dominion over Cook Inlet was demonstrated by a traditional assertion of authority when in 1786 an attempt by the Englishman, Portlock, to enter Cook Inlet drew a Russian fur trader's cannon fire. (Finding 20; R. 3781-2).

C. Exercise of Sovereignty by the United States.

The rights of Russia as to jurisdiction and its sovereignty in Cook Inlet passed unimpaired to the United States at the time of the Treaty of Cession in 1867. (Finding 22; R. 3782). The United States thereafter accelerated and augmented the exercise of sovereignty over all of Cook Inlet. The principal area of United States' concern was in the management and control of Cook Inlet's fisheries so as to avoid their dissipation and consequent economic disaster to American citizens.

The fact of United States' jurisdiction over all of Cook Inlet was first determined judicially when the United States District Court for the District of Alaska upon the urging of the Justice Department held that the arrest of the vessel KODIAK was an assertion by the United States of territorial jurisdiction over Cook Inlet. (*The KODIAK*, 53 Fed. 126 (1892)). The Revenue Cutter MOHICAN arrested the KODIAK and two other vessels, the LETTIE and JENNIE for alleged violations of R.S. 1956 which prohibited the taking of sea otter in United States waters. The Court's decision was well publicized, both in newspapers and official reports; and the then Attorney General of the United States, expressly informed of the decision, obviously agreed with the decision and the action taken. The decision of the District Court in the *KODIAK* case was adhered to the following year when two vessels, the OLGA and MARY ANDERSON were arrested for alleged similar violations in the disputed area of Cook Inlet. (Findings 23-30; R. 3782-3783).

1. *The Alien Fishing Act*. The arrests of the KODIAK, LETTIE, JENNIE, OLGA and MARY ANDERSON in Cook Inlet set the stage in 1906 for the passage of an "Act Prohibiting Fishing by Aliens in the Waters of Alaska," hereinafter referred to as the Alien Fishing Act. This Act prohibited aliens from fishing in the waters of Alaska under the jurisdiction of the United States. There can be no doubt that the earlier arrests demonstrated that the waters of all of Cook Inlet were waters under the jurisdiction of the United States subject to the Alien Fishing Act and therefore waters from which aliens were excluded. Subsequent to the passage of the Alien Fishing Act and up through the time of Alaska Statehood when the State of Alaska assumed control of Alaska's fisheries, all waters of Cook Inlet inside a line drawn from Point Gore through the Barren Islands to Cape Douglas, as well as the adjacent territorial sea, were patrolled for the purpose of enforcing the Alien Fishing Act. Thus, the effect of the Act was to exclude aliens both from fishing within the inland waters of Cook Inlet inside a line drawn from Point Gore to Cape Douglas, and from fishing within the territorial sea three miles seaward of that line. (Findings 31-34; R. 3783-3784).

2. *Southwestern Alaska Fisheries Reservation*. The intensity of sovereignty exercised by the United States over Cook Inlet increased in direct proportion to the increased concern of the United States over Cook Inlet's fisheries. Hence, the geographic area of Alaska in which Cook Inlet is located was singled out for special treatment in 1922. In that year President Harding, by Executive Order, created the Southwestern Alaska Fisheries Reservation. The regulations under that Order defined the Cook Inlet area as that area ". . . north of the latitude of Cape

Douglas . . . including the Barren Islands . . . and *all* the shores and *waters* of Cook Inlet." [Emphasis supplied] As to those waters, the Presidential Order admonished:

> "Warning is hereby given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned."

That warning struck home on May 27, 1924 when two American halibut vessels, the ZAPORA and NEW ENGLAND were arrested and boarded for fishing in the disputed area of Cook Inlet without first obtaining the required authority. Clearly from the period beginning in 1892 to the ZAPORA and NEW ENGLAND boardings in 1924, the United States had treated all of Cook Inlet's waters as its own and had exercised its exclusive sovereignty therein. (Findings 35-39; R. 3784-3785).[8]

3. *The White Act*. In 1924 Congress passed the "Act for Protection of the Fisheries of Alaska and for Other Purposes" (hereinafter referred to as the White Act), 43 Stat. 464. That Act, which was passed in response to a severe menace to Alaska's fish resources (Ex. AK, pp. 2-11), was the successful culmination of the United States' efforts in achieving complete and exclusive sovereignty over Cook Inlet. The Secretary of Commerce and later the Secretary of the Interior were given authority to "set apart and reserve fishing areas in any of the waters over which the United States has jurisdiction." Here again the Executive Branch of the Government was called upon to determine whether or not all of the waters of Cook Inlet

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8. A complete discussion of the evidence pertaining to the KODIAK arrests, the Alien Fishing Act and the Southwestern Alaska Fisheries Reservation appears in Alaska's post trial brief, pp. 16-24 (R. 3614-3622).

were included within "the waters of Alaska over which the United States has jurisdiction." Again, the United States acted clearly and unmistakably.

The Secretary of Commerce and later the Secretary of the Interior, from 1924 to 1959, a period of 35 years, defined the waters over which the United States has jurisdiction ". . . *to include Cook Inlet,* its tributary waters and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included." (Emphasis supplied). (Laws and Regulations for the Protection of Fisheries of Alaska, Department of Commerce, December, 1924; Ex. IU; Findings 42, 44; R. 3786).

The United States has argued that this regulation should be narrowly construed and that all the waters of Cook Inlet should not be included, but only the "territorial and coastal" waters extending 3 miles from the shoreline of Cook Inlet. As we see it, this is an unnecessarily narrow and twisted interpretation of the regulation and unsupported by other uncontradicted evidence. For instance, other areas in Alaska such as Bristol Bay were defined to include "territorial, coastal and tributary waters." The absence of the words "territorial and coastal waters" in the definition of Cook Inlet, contrasted with the inclusion of the words "to include Cook Inlet . . . and all adjoining waters north of Cape Douglas, etc." makes unmistakably clear the meaning of the regulation in question and extended jurisdiction over all of the waters of Cook Inlet. (Finding 44; R. 3786).[9] In the light of the federal statutes

9. Other strong evidence that Cook Inlet was treated as the inland waters of the United States is the fact that the Point Gore-Cape Douglas line defined in the White Act regulations was used as the baseline for the measurement of the territorial sea for purposes of fisheries regulation. That is to say, the three mile limit or the baseline for the measurement of the territorial sea in Cook Inlet was measured from that line, not from the shoreline of Cook Inlet. Moreover, as the Court found, there was and is no doubt that the White Act and its regulations were applied to waters within the boundaries of the three mile limit only, including, of course, inland waters. (Ex. CR, EK, EF, EJ, EL, EI, AZ, p. 81; Finding 43; R. 3786).

and regulations, consider also that the trial judge had before him the unrefuted testimony of numerous witnesses that agents and officials of the United States Bureau of Fisheries and its successor agencies regularly and continuously patrolled the whole of Cook Inlet area as defined in the regulations. Those witnesses, whom the lower court found to be credible, testified that the purpose of those patrols was, of course, to enforce the White Act and the Alien Fishing Act.[10]

The lower court had no alternative but to find that these enforcement efforts were open and apparent. And the success with which the enforcement was carried out and the extent of its notoriety is shown by the fact that except for a few isolated Canadian halibut fishermen, no foreigners fished in or attempted to fish in Cook Inlet.[11] Moreover, the evidence clearly showed that when the occasion arose, in addition to numerous boardings[12] in the disputed area, those found in violation of the laws were arrested and where necessary, their vessels and gear were

10. See *Skiriotes v. Florida*, 313 U.S. 69 (1941). The White Act, unlike the Florida statute in the *Skiriotes* case was by its terms limited in application to waters of Alaska over which the United States had jurisdiction.

11. The exclusivity of the American fishery in Cook Inlet was recognized when in October of 1930 the Commissioner of Commerce ordered certain charts destroyed which depicted portions of Cook Inlet as high seas. This was done to prevent foreigners from encroaching upon an exclusive American fishery. (Finding 57; R. 3790).

12. A high ranking United States official testified that such boardings are acts of enforcement and constitute a serious occasion. (Baltzo testimony, Tr. 176).

confiscated.[13] (Findings 40-57; R. 3786-3790; see particularly Findings 46-56; R. 3787-3790).

4. *The Gharrett-Scudder Line.* One of the United States' most significant assertions of authority over all of Cook Inlet took place in 1957 and 1958 when the United States communicated to Canada, in a classic manner, its claim to Cook Inlet. In order to delineate the waters of Alaska from the high seas, in 1957 the Department of the Interior promulgated a regulation defining the waters of Alaska as all those waters north and west of the international boundary at Dixon Entrance extending ". . . 3 miles seaward (1) from the coast, (2) *from lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances.*" (50 C.F.R. §101.19 (1957)). (Emphasis added). In 1957 Canada and the United States also proposed the prohibition of the taking of salmon with nets from the high seas. Because of this proposal Canada requested the United States to furnish it charts depicting the location of the line described in the above-quoted regulation. Since the regulation was clear on its face, the United States could have declined to send the charts, thus avoiding the necessity of having to enter into a potential dispute with Canada over the location of the waters of

13. The United States argues that since most of the charges which formed the basis of the arrests were dismissed, there was no exercise of authority. However, any dismissals were in all instances based upon a failure to prove the merits of the charge and not based upon a lack of jurisdiction. The United States has grossly misread *U. S. v. California*, 381 U.S. 139 (1965) in arguing that the dismissal of *U. S. v. Carillo*, 13 F.Supp. 121 (1935) derogates from Alaska's claim of sovereignty in this case. In *Carillo* a Federal charge was dismissed for want of federal jurisdiction beyond the three mile limit. This is vastly different from a dismissal of charges on the merits of the criminal complaint.

Alaska. Nevertheless, the United States on or about October 15, 1957, sent to the Canadian Government charts depicting the line, thereafter known as the Gharrett-Scudder line. The Gharrett-Scudder line, which was depicted as the baseline for the measurement of the territorial sea for fishery regulation, enclosed as inland waters all of the disputed area of Cook Inlet. As will be shown hereunder, Canada did not contest or oppose the claim made to Cook Inlet. (Findings 58-63; R. 3791-3792). The Gharrett-Scudder line and the regulations upon which it was based confirm as of the date of Alaska Statehood the status of Cook Inlet as inland waters of the United States.

Judge von der Heydt best expressed the only conclusion to be derived from the foregoing evidence. He found with respect to the vast amount of federal activity in all of Cook Inlet year after year that "[t]he State of Alaska has produced evidence which establishes clear beyond doubt that there has been such sufficient exercise of authority over lower Cook Inlet." (Pp. 7-8, Opinion). Indeed, by way of summary he stated: "These were deeds—and not merely proclamations—by which the intent of the United States to exercise sovereignty was clearly expressed." (Finding 47; R. 3788).[14]

14. The United States argues that the exercise of authority heretofore demonstrated is rendered ineffectual by *Island Airlines v. C.A.B.*, 352 F.2d 735 (9th Cir. 1965) and by the Master's Report in *U. S. v. California*, 332 U.S. 19 (1947) (Ex. 49). Suffice it to say the water areas involved in those cases were vastly different from the landlocked waters here presented, and the proof presented by each State was virtually non-existent.

D. Exercise of Sovereignty by the State of Alaska.

The District Court found on the basis of undisputed evidence that after the State of Alaska took over control of its commercial fisheries on January 1, 1960, it asserted continuous authority over the fisheries in Cook Inlet in the same manner as done by the United States since the arrest of the KODIAK in 1892. The State continued in effect substantially the same definition of the Cook Inlet area and distributed regulations containing that definition to authorities of the United States and representatives of Japan, Canada and other foreign nations. No objection was ever received concerning the definition. The Court found that officials of the State have regularly and continuously patrolled all of Cook Inlet for the purpose of enforcing State fishing laws, and that when violations of the laws occurred, arrests were made.[15] (Findings 64-72; R. 3792-3794).

The vigor with which Alaska pursued its claim to Cook Inlet is perhaps nowhere better demonstrated than in the Shelikof Strait incident, an incident which the Court characterized as the clearest exercise of sovereignty by the State. On or about April 15, 1962, Alaskan fishery enforcement officials arrested three Japanese fishing vessels, one of which was more than three miles from shore in Shelikof Strait.[16] The arrest was one event in a series of events involving the Japanese with Cook Inlet.

15. Arrests were made of nonresidents as well as residents. (Findings 71-72; R. 3794).

16. The location of at least one vessel more than three miles from shore is undisputed and uncontradicted in the record. See testimony of Governor William A. Egan (Tr. 729, 764).

A Japanese fishing vessel, BANSHU MARU, and two other fishing vessels, had intruded into the southernmost part of lower Cook Inlet near the Barren Islands and then immediately proceeded into the nearby waters of Shelikof Strait. Having been forewarned that such Japanese fishing vessels intended to intrude into the waters of Cook Inlet to establish historic Japanese fishing rights therein, the Governor of Alaska, after seeking in vain to obtain immediate action by our State Department,[17] authorized the arrest of three Japanese vessel captains and the boarding of two Japanese fishing vessels, at least one of which was more than 3 miles from Alaska's shore. The Court has dealt at length with this incident in its Findings of Fact. (Findings 73-85, incl.; R. 3794-3797). These Findings need not be repeated here. It is significant to note, however, that they are not in dispute and show clearly beyond doubt the most vivid exercise of sovereignty against foreigners. There was evidence that, with the knowledge of the Government of Japan[18] (notwithstanding its subsequent protest), the Japanese fishing company agreed in writing with Alaska thereafter not to fish in any part of the disputed area of Cook Inlet. Since then no such fishing by any Japanese citizen or vessel has taken place in Cook Inlet, although fishing has subsequently occurred elsewhere in the vicinity of Alaska.

The United States itself, even though given the opportunity to do so, did not dispute Alaska's action in

17. On a prior occasion, the United States informed Alaska that in cases of foreign fishing in Alaskan waters, the State should take appropriate action itself. (Finding 76; R. 3795).

18. (Ishimura testimony, Tr. 273) "Q. Mr. Ishimura, you were then aware, were you not, that the Japanese Government was consulted by your company about this agreement. . . ? A. Of course, yes . . ."

claiming Cook Inlet. On May 3, 1962 the Japanese Government protested to the United States the arrests and boardings in Shelikof Strait. However, the official reply of the United States, contrary to a suggestion made by a lawyer for the State Department, did not state that either Cook Inlet or Shelikof Strait was inland waters. To the contrary, the United States' reply said that the matter included questions of fact and law for the courts, presumably questions of law and fact similar to the case at bar. The incident closed by a statement by the President of the United States to the Governor of Alaska that Alaska did the right thing in seizing the Japanese vessels and enforcing Alaska's jurisdiction. (Findings 73-85; R. 3794-3797).

There can be no doubt, as demonstrated above, that the District Court correctly found that the United States and Alaska have consistently exercised authority over all the waters of Cook Inlet landward of the line joining Point Gore, Cape Douglas and the Barren Islands. The evidence on the issue of sovereignty is unrefuted, uncontradicted, and clearly not conflicting. For that reason, the Court's Findings and Conclusions on the issue of sovereignty must be upheld.

Argument

The lower court concluded, and Appellant does not disagree, that the authority which a nation must exercise over bays in order to be able to claim them as historic waters is *sovereignty*. *Juridical Regime* 80. This brings us to the fundamental question as to what kind of acts constitute evidence of sovereignty. There is also the problem as to whether the acts, upon which the lower court relied, were legally sufficient to prove sovereignty.

Appellant contends here, as it did in the lower court, that the requisite exercise of authority or sovereignty must consist of acts directed at foreign nations. So Appellant points out, and correctly so, that most of the arrests and enforcement activities involved American citizens and not alien fishermen. Hence it argues that Alaska's evidence proved nothing and was wholly irrelevant.

Appellant's argument is ineffectual and faulty in several respects. Let us consider, *firstly,* the almost total absence over the years of foreigners in Cook Inlet. Recognizing that sovereignty must be effectively exercised by deeds and not merely by proclamations, the writers of the *Juridical Regime* stated:

> "This does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken." *Juridical Regime* 99.

The lower court, we contend, acted properly in taking into account the absence of foreign vessels in Cook Inlet over a vast period of time. The Court also properly relied upon the testimony of law enforcement officials who testified that, had they discovered foreign fishing or trespassing in Cook Inlet, they would have acted in such a way as to maintain authority over lower Cook Inlet.

(e.g. Roberts testimony, Tr. 329; Studdert dep. pp. 21-24).

Secondly, Appellant's argument is invalid because it overlooks the undisputed evidence that there was indeed enforcement activity and the exercise of United States and Alaska sovereignty against *foreigners.*

There is no need to reiterate the undisputed evidence, but it may be recalled that sovereignty was asserted against Japanese fishermen (through the seizure of the BANSHU MARU); the submission of the Gharrett-Scudder line to the Canadian Government and its apparent acceptance thereof; the wide publication and distribution throughout much of the world of federal laws and regulations banning aliens from fishing in Cook Inlet (the Alien Fishing Act); the openness, notoriety and continuity of both federal and state patrols that had continued uninterruptedly since 1906 and since the enactment of the White Act; and in the face of all of this, the complete absence of any type of protest (except the repudiated Japanese note) by any foreign nation against the continued exercise of sovereignty over Cook Inlet.

Finally, Appellant, we believe, has ignored significant portions of the *Juridical Regime,* which is attached as an Appendix to its brief. In discussing the kind of authoritative acts which a state must exercise, the authors of the *Juridical Regime* made the following statement, peculiarly applicable to the facts of the present case:

> "Suppose . . . that the State has continuously asserted that its citizens had the exclusive right to fish in the area, and had, in accordance with this assertion, kept foreign fishermen away from the area or taken action against them. In that case the State in fact exercised sovereignty over the area, and its claim, on a historical basis, that it had the right to continue to do so would be a claim to the area as its 'historic waters'. The authority exercised by the State would be commensurate to the claim and would form a valid basis for the claim (without prejudice to the condition that the other requirements for the title must also be fulfilled)." *Juridical Regime* 86.

The author went on to quote the opinions of prominent and internationally recognized writers on the subject and to refer to international conventions and arbitrations. One writer, Gidel, in discussing the acts by which authority is exercised, stated:

> "It is hard to specify categorically what kind of acts of appropriation constitute sufficient evidence: the exclusion from these areas of foreign vessels or their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. It would, however, be too strict to insist that only such acts constitute evidence. In the Grisbadarna dispute between Sweden and Norway, the judgment of 23 October 1909 mentions that 'Sweden has performed various acts . . . owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty.'" *Juridical Regime* 89.

Bourquin, another writer, agreed and stated:

> "What acts under municipal law can be cited as expressing its desire to act as the sovereign? That is

> a matter very difficult, if not impossible, to determine *a priori*. There are some acts which are manifestly not open to any misunderstanding in this regard. The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign." *Juridical Regime* 90.

In the *Fisheries* case, *United Kingdom v. Norway*, Judgment of 18 December, 1951, Norway stated in its Counter-Memorial:

> "It cannot seriously be questioned that, in the application of the theory of historic waters, acts under minicipal [sic] law on the part of the coastal State are of the essence. Such acts are implicit in an historic title. It is the exercise of sovereignty that lies at the basis of the title. It is the peaceful and continuous exercise thereof over a prolonged period that assumes an international significance and becomes one of the elements of the international juridical order." *Juridical Regime* 93.

Clearly Alaska's evidence meets the test set forth in the above-quoted portion of the *Juridical Regime*, an authority admitted by the United States to be controlling in this case.

With regard to the arrest of the Japanese fishermen and the seizure of their vessels, Appellant has pointed out—and again factually correctly—that this incident involved only the action of State officials who, as opposed to federal officials, have no responsibility for the conduct of foreign relations. Hence the argument is that State acts are irrelevant in proving the exercise of sovereignty over Cook Inlet. The United States Supreme Court answered this argument in *United States v. Louisiana, supra.* There it was held (394 U.S. at 77) that a controversy such as

this between the federal and state governments should be viewed as if the claim (of the State of Alaska) was being made by the United States opposed by another nation. With this premise, the Court then made clear that State exercise of sovereignty, as distinguished from federal assertions of sovereignty, may properly be considered on the issue of sovereignty and historic title. So we contend the lower court acted with complete propriety—and indeed had no alternative but to consider the actions of state officials in unmistakably preventing the Japanese from acquiring any rights in Cook Inlet.

Appellant further argues, however, that the seizure of Japanese vessels in *Shelikof Strait* is not evidence of an intent to claim *Cook Inlet*. But here again Appellant falls into the error of considering only a portion of the evidence and ignoring other relevant proof. Granted that the arrests were made in Shelikof Strait rather than in Cook Inlet, the evidence is that the Japanese vessels had just left Cook Inlet and were not apprehended until they had entered Shelikof Strait. The Japanese were charged with violating the waters of Cook Inlet (as well as Shelikof Strait) and agreed, with the knowledge of the Japanese Government, that they would not again intrude into the waters of *Cook Inlet*.[19] Thus the undisputed evidence is that, although the arrests occurred in Shelikof Strait, the gravamen of the offense and the assertion of the right to exclude the Japanese involved Cook Inlet (Findings 73-80; R. 3794-3796).

Appellant has also overlooked the evidence that Alaska enforcement officials have arrested non-citizens of Alaska.

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19. See paragraph 2 of the Agreement (Ex. IV) wherein a line is described and defines an area, including Cook Inlet, wherein the Japanese agreed not to fish thereafter.

(Findings 71-72; R. 3794). This exercise of sovereignty was and could have been valid only on the basis of territorial jurisdiction by the State—the legitimate enforcement of municipal laws.

II.

THE DISTRICT COURT CORRECTLY FOUND, UPON UNCONTRADICTED AND AMPLE EVIDENCE, THAT THERE HAS BEEN A CONTINUATION OF THE EXERCISE OF SOVEREIGNTY OVER COOK INLET FOR SUCH PERIOD OF TIME AS TO HAVE DEVELOPED INTO A USAGE.

As the above evidence demonstrates clearly beyond doubt, there has been a continuous exercise of sovereignty —first by Russia from at least 1821 through 1867, then by the United States from at least 1906 and possibly earlier, and more recently by the State of Alaska from 1959 to the present. Hence there has been an exercise of authority over Cook Inlet by American citizens, acting through their state and national governments for more than sixty-six years. The legislative enactments and federal regulations of the United States concerning the disputed areas have been applied consistently and without interruption for a sufficient time to give rise to a usage by the United States and its successor, the State of Alaska, over the disputed waters. (Findings 86-91, incl.; R. 3797-3798).

Here again the testimony of two recognized and distinguished experts, DeArmond and Hunt, supplemented and buttressed the evidence hereinabove referred to in

the trial court's Findings of Fact. The Findings are not erroneous, and in fact they are largely undisputed.

Dr. William Hunt, then Chairman of the History Department of the University of Alaska, after having qualified as an expert witness, testified as follows:

> "Q. Now, based on your training, experience, and those studies, do ycu have an opinion as to whether or not there has been a historical exercise of authority over Cook Inlet by those people who have inhabited its shores?
> A. Yes, sir, I have.
> Q. What is that opinion?
> [Tr. 479-480]
> * * *
> The Witness: Sir, my opinion is that there has been a historical exercise of control over Cook Inlet and its shores.
> * * *
> Q. Do you have an opinion, Dr. Hunt, based upon your training, experience, and those studies as to whether from a historical standpoint there has been such continuity of this exercise of authority as to have developed into a usage?
> A. Yes, sir.
> Q. What is that opinion, sir?
> A. I believe there has been such a continued exercise of authority as to have ripened into a usage."
> [Tr. 483].

He proceeded at length to give factual reasons in support of these conclusions. (Tr. 482-508). Similar testimony was given by Robert DeArmond, an expert witness in matters pertaining to research of the history of Alaska. (Tr. 520-560).

Argument

It is clear that the "exercise of authority [must be] continued for a time sufficient to confer upon it the quality of usage." *Juridical Regime* 100. While it is clear that no precise length of time is necessary to create a usage on which historic title is based, "the State must have kept up its exercise of sovereignty over the area for a considerable time." *Juridical Regime* 103.[20]

Applying this principle to the facts at hand, the Court held, as demonstrated by the evidence summarized above, that the exercise of authority over lower Cook Inlet "has existed without interruption from 1906, and very possibly earlier, until the time this dispute arose." (Op. p. 10).

III.

THE TRIAL COURT CORRECTLY FOUND, UPON AMPLE AND LARGELY UNREFUTED EVIDENCE, THAT FOREIGN NATIONS HAVE ACQUIESCED IN THE EXERCISE OF SOVEREIGNTY OVER COOK INLET.

The detailed Findings of the District Court are based upon voluminous factual evidence that foreign nations have acquiesced in the exercise of sovereignty over Cook Inlet by those nations controlling its shores and are clearly not erroneous. (Findings 92-102; R. 3798-3800).

The District Court found that no nation protested Russia's exercise of exclusive dominion over Cook Inlet. Likewise, it found that no nation protested the United States' enforcement of the Alien Fishing Act, the South-

20. Where the term "State" is used by the author, there is meant a national sovereignty or government as distinguished from an internal State or subdivision of a nation.

western Alaska Fisheries Reservation, or the White Act over all of Cook Inlet. In fact, as to Cook Inlet, Canada accepted the placement of the Gharrett-Scudder line which included all of the disputed area of Cook Inlet as inland waters of the United States, not high seas. If, at any time in the entire history of Russian, United States and Alaskan sovereignty over Cook Inlet it was appropriate for a foreign nation to protest the United States' claim, it was in October 1957 when Canada received the charts depicting the Gharrett-Scudder line (Ex. IE 6). Canada neither said nor did anything.[21]

The District Court found that the presence of a few Canadian halibut fishermen did not constitute effective opposition by Canada to the United States' and Alaska's historic claim to Cook Inlet. The argument of the United States to the contrary has no merit since, first of all, acts of individual citizens do not constitute opposition of a government, particularly when so few in number.[22] In addition, the District Court found that the number of Canadian halibut vessels was so small as to be *de minimis*. After carefully considering the United States' evidence on the issue, the Court found that although the United States had made an exhaustive study of its records, it had been able to offer evidence—inconclusive and undisputed—which if believed would show there were possibly only two undetected occurrences of Canadian halibut fishing in Cook Inlet before Alaska Statehood, and that thereafter

21. A complete analysis of the evidence on the Gharrett-Scudder line and its significance appears in Alaska's post trial brief, R. 3666-3676.

22. Those acts which determine the status of an area as an historic bay must emanate from the sovereign, not private individuals. *Juridical Regime* 95.

only five Canadian vessels fished for halibut in the Inlet, none of which were detected by State enforcement officials. The testimony of numerous witnesses is clear that had the vessels been detected, they would have been arrested.[23]

Moreover, the Court found that at least one Canadian vessel fished unmolested within what even the United States admits to be the territorial sea of Cook Inlet, that is, within three miles from shore.[24] (Finding 100; R. 3799).

In addition to the foregoing, the District Court considered other factors which reinforce its Finding that the presence of a few Canadian halibut vessels was not controlling on the issue of Cook Inlet's status as an historic bay.

First, the Court recognized that historic title to the disputed area had already ripened. Since most of the intrusions took place after the commencement of this suit and by that time the United States had engaged in all of the activity described in the Findings, the Court was clearly correct in deciding that historic title to Cook Inlet had already ripened in the United States and Alaska.

Second, the evidence showed and the Court found that in the event of a real challenge to American fishery jurisdiction in the disputed area, such as foreign fishing for

23. Typical of the testimony on the point is that of Donald W. Roberts, Agent in charge of the Cook Inlet Fisheries for enforcement purposes in 1954. Mr. Roberts testified in response to a question concerning the presence of Canadian halibut fishermen in Cook Inlet ". . . If there had been any vessels in Cook Inlet as described by the regulations, we would have apprehended them because it prohibited the taking of fish from this area by foreign vessels." (Tr. 320) However, Mr. Roberts earlier testified he was unaware of a Canadian halibut fishery in Cook Inlet. (Tr. 319).

24. The United States points out that foreign fishing is prohibited in the territorial sea. (United States' Brief, p. 16).

salmon, the United States would have been quick to take enforcement action.

Third, the Court found on the basis of undisputed evidence that there existed traditional ties of friendship between the United States and Canada. This factor, which is closely related to that of consent, recognized the past close relations between the two countries.[25] As an example of the close relationship existing between Canada and the United States, the District Court referred to the 1970 United States-Canada Reciprocal Fishing Agreement (Exhibit "R").[26] The Court did not find that by virtue of that agreement Canadians had the right to fish for halibut in Cook Inlet.[27] If the Opinion left any doubt about what the Court ruled, the Findings of Fact make the point clear. In Finding 101(e) the Court simply noted that traditional ties of friendship were a factor supporting the finding that the number of Canadian halibut vessels in Cook Inlet were so small as to be *de minimis.*[28] (R. 3800) (Findings 100-102; R. 3799-3800).

25. An indication of this attitude is a letter from the Warden of the Bureau of Fisheries, Ketchikan Office, to the Bureau in Juneau, dated August 8, 1937, wherein the Warden wrote: "Release boats Stop Our Policy to be lenient with Canadian boats fishing halibut close to boundary." (Ex. "DZ").

26. That agreement was merely one in a long line of agreements between the United States and Canada dating back to 1782. (Ex. "BY").

27. For that reason, the argument of the United States at pp. 40-41 of its brief misses the Court's point. The consent given to fish in Cook Inlet, of course, was not formalized in the reciprocal agreement.

28. In the course of its argument and going outside the record, the United States refers to an event allegedly occurring subsequent to the District Court's decision. The United States apparently is relying on an alleged protest by Canada to threatened state exercise of authority over the disputed area (see footnote 12, p. 41 Appellant's brief). In relying on this event, subsequent to the judgment of the District Court, the United States is in direct violation of the opinion

The second nation most likely to be interested in Cook Inlet's Fisheries, Japan, has likewise acquiesced in the historic claim of the United States and Alaska to Cook Inlet. Again, based upon its analysis of numerous exhibits and lengthy testimony, the Court found that after the arrest of Japanese citizens and vessels in Shelikof Strait, the Japanese fishing company with the consent of the Japanese Government agreed with Alaska not to fish in Cook Inlet. (Finding 78; R. 3795-3796). Significantly the Court found that even though Japan later protested the action of Alaska in making the arrests, and even though Alaska has continued to claim the disputed area by exercising sovereignty thereover, no Japanese vessel has fished in any part of Cook Inlet. (Finding 79; R. 3796). Clearly, Japan's actions speak louder than its words. No conclusion is possible other than that Japan has acquiesced in the claim of the United States and Alaska to Cook Inlet.[29]

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of the United States Supreme Court in *U. S. v. Louisiana*, 394 U.S. 11, 78, wherein the Court stated:

> "It is one thing to say that the United States should not be required to take the novel, affirmative step of adding to its territory by drawing a straight baseline. It would be quite another to allow the United States to prevent recognition because of *past* events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States v. California*." (Emphasis, the Court's).

Moreover, reference to the incident is irrelevant. The *Juridical Regime* states at 121:

> "After a State has exercised sovereignty over a maritime area during a considerable time under general toleration by the foreign States, and an historic right to the area has thus emerged, it is not possible for one or more States to reverse the process by coming forward with a protest against the already accomplished fact."

29. The Japanese protest has been rendered ineffective by continued Alaskan sovereignty over the disputed area and by the lack of

Lastly, with rare exceptions there has been no foreign fishing in the disputed area of Cook Inlet. As shown earlier, the District Court found that there were only two clear instances of Canadian vessels fishing for halibut in Cook Inlet in the 94 years of American domination over Cook Inlet before Statehood. There were no other foreign fishing vessels in the disputed area during that period. The lack of such foreign fishing activity in an area, which was so clearly the subject of regulation and control by the United States, clearly demonstrates foreign acceptance and recognition of that control.[30] (Finding 102; R. 3800).

Argument

The attitude of foreign nations, the last of the three factors to be considered in determining whether a nation has acquired historic title to a maritime area, has been described both as "acquiescence", and "toleration". *Juridical Regime* 106 and 109. For purposes of this case the distinction between the two terms is unimportant since the lower court applied the higher standard and found that "the community of nations has acquiesced in the emergence of historic title of lower Cook Inlet." (Op. p. 11). The *Juridical Regime* quotes with approval an expert in the

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Japanese opposition. The *Juridical Regime* 115 makes this clear: "Should despite the protest, the coastal State continue to exercise its sovereignty over the area, the opposition on the part of the foreign nation must be maintained by renewed protests or some equivalent action."

30. The laws and regulations governing the fisheries of the Cook Inlet area including the disputed area were published and were, of course, public records, (Ex. IU, IX1-IX12) from at least 1924 onward. Moreover, the District Court found that the United States' and Alaska's claims to the disputed area of Cook Inlet were open and notorious. (Findings 64-66; 98; R. 3792-3793; 3799). See *Juridical Regime* 128-130.

international law of bays, Bourquin, who supports the theory that the attitude required of foreign nations is that of acquiescence:

> "In such cases the question to be asked is not whether the other States consented to the claims of the coastal State but whether they interfered with the action of that State to the point of divesting it of the two conditions required for the formation of an historic title.
>
> "Obviously only acts of opposition can have that effect. So long as the behavior of the riparian State causes no protest abroad, the exercise of sovereignty continues unimpeded. . . .
>
> "The absence of any reaction by foreign States is sufficient." *Juridical Regime,* 109.

Thus in applying the concept of acquiescence it is clear that an opposing nation must maintain its opposition to the historic bay claim so long as the sovereignty of the claiming nation persists. A corollary to this rule is that in the face of continuing sovereignty a simple and single protest, such as the Japanese note, will not suffice. *Juridical Regime* 112-115. Moreover, to prevent the ripening of historic title the opposing nation must have effectively expressed its opposition at the time the exercise of sovereignty became open and notorious. And even if the foreign nation was not put on actual notice of the claim, because of any interest it had in the area it should have made itself aware of the claim. *Juridical Regime* 128-130.[31]

Applying the foregoing principles to this case it is clear that the only conclusion available to the lower court was

31. The Supreme Court in *United States v. California*, 381 U.S. 139, 172 (1965), and in *United States v. Louisiana*, 394 U.S. 11, 23 (1969) relied on the reasoning of the *Juridical Regime* cited above.

the one the Court drew—that foreign nations have acquiesced in the United States' and Alaska's claim to Cook Inlet. The evidence clearly demonstrates that since 1906 and even earlier no foreign nation has interfered with the exercise of sovereignty over Cook Inlet so as to divest the United States or Alaska of historic title. And Japan, the only nation to make any kind of protest, did not continue its protest in the face of continuing Alaskan sovereignty over Cook Inlet.

Lastly, the United States completely misstates what is clearly the law in arguing that positive proof of a foreign nation's approval to an historic bay claim is required. But even if that is the law, the evidence clearly showed acceptance by both Canada and Japan of the claim of the United States and Alaska to all of Cook Inlet.

PART TWO

ALL OF COOK INLET'S WATERS ARE INLAND WATERS—NOT TERRITORIAL SEA—LANDWARD OF THE LINE JOINING POINT GORE, THE BARREN ISLANDS AND CAPE DOUGLAS.

The District Court in its Opinion, concluded:

> "All of Cook Inlet located north of the Cape Douglas-Point Gore line, including the Barren Islands, are inland waters of the State of Alaska. Accordingly, under the provisions of the Submerged Lands Act of 1953, the subsurface resources of lower Cook Inlet are vested exclusively in the State of Alaska." (R. 3775; Op. p. 12).[32]

32. By virtue of that conclusion, the state is afforded identical rights in the seabed and subsoil underlying water three miles seaward of the Cape Douglas-Barren Islands-Point Gore line. 43 USC §§1301 (a)(2), 1311. The fact that the Court described the latter grant as

Notwithstanding the detailed findings of the Court as to the extensive authority exercised over the disputed area of Cook Inlet by Russia, the United States, and Alaska, a careful reading of the United States' brief discloses that a principal point upon which it relies in this appeal is that Alaska has proved that Cook Inlet is territorial sea, not inland waters. The United States disputes the Court's conclusion that Cook Inlet is historic inland waters since the evidence fails to disclose an interference with a foreign nation's right of innocent passage.[33] This argument all but concedes the sufficiency of Alaska's proof that Cook Inlet is an historic bay. But further than that, it can only be characterized as a last ditch effort by the United States to grasp the marine resources of lower Cook Inlet by departing from or at least repudiating the materials and authorities it has appended to its brief.

Appellant's argument is supported by no meaningful authority and represents a creature which is not identifiable and which is inconsistent with a large body of established law. In fact, Appellant has had apparent difficulty in clearly articulating its meaning. The theory, as we best understand it, goes something like this: Territorial waters which border the seaward limit of inland waters are different from inland waters only in respect to innocent passage. That is to say, territorial waters are those waters over which the claiming state or nation has exercised acts of sovereignty and control but has not denied the right of innocent passage through such waters by foreign

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a grant of subsurface resources located beneath the territorial sea is merely a recognition of the fact that in Alaska the territorial sea of three miles is co-extensive with the Submerged Lands Act Grant.

33. Article 14, Section 1, of the Convention of the Territorial Sea and the Contiguous Zone (Ex. 53) grants to ships of all nations the right of innocent passage through the territorial sea.

vessels. Inland waters, on the other hand, are those waters over which the claiming state has denied the right of innocent passage as well as having exercised other acts of sovereignty. So Appellant concludes that the only act which will give rise to an implication of the assertion of sovereignty over inland waters is interference with innocent passage (P. 16, Appellant's Brief).

There are at least four reasons why any such theory lacks validity. In the *first* place there is absolutely no evidence in the record, and Appellant has cited none, that shows that either the United States or the State of Alaska has ever permitted or recognized the right of innocent passage of foreign vessels in the disputed area of Cook Inlet. Passage is defined as including the "stopping and anchoring, but only insofar as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress." (P. 11, Appellant's Brief). Every inference in the record, borne out by the express testimony of numerous witnesses, is to the effect that the practice of foreign vessels stopping and anchoring within the confines of lower Cook Inlet would be prohibited. The District Court, it will be noted, relied upon this evidence and expressly found that "Cook Inlet is not and never has been a waterway for intercourse between nations." (Finding 10; R. 3779).

Appellant's claim of historic territorial sea is invalid for a *second* compelling reason. It is to be noted that presumably, if the evidence has established the existence of an historic bay, whether it be inland or territorial, the three requirements must have been established, to wit: the exercise of authority over a continuous period of time, with the acquiescence of foreign nations. Thus, in claiming Cook Inlet to be an historic territorial sea, Appellant must

concede that Alaska has proved the three requirements—a blatant inconsistency with other arguments of the Appellant. If the United States persists in asserting the historic territorial bay theory, it disproves its other contentions that Alaska has not established the three requirements for the emergence of historic title to lower Cook Inlet.

Third, and perhaps more importantly, there is no recognizable authority that supports Appellant's theory of historic territorial bay. In fact the contrary is true, as is shown by the document, *Historic Bays,* Memorandum by the Secretariat of the United Nations, Document A/Conf 131, one of the United States' own exhibits in this case. (Ex. 52). Therein we find:

> "It is always necessary to remember in dealing with 'historic waters', the essential point that those waters are internal waters. This fact explains many aspects which would be otherwise difficult to grasp. The theory was originally evolved to apply to 'bays', and is still referred to as the theory of 'historic bays' because it was never envisaged that it might apply except in areas which, by reason of their configuration, are generally not used as major international routes of transit." *Historic Bays* 117. (See also *Juridical Regime* 163 wherein it is stated that the dominant opinion is that historic bays are internal waters.)

The document, *Juridical Regime,* as we have seen, is replete with statements that there may be numerous ways in which authority may be exercised other than the denial of innocent passage. These include, among others, the denial of fishing rights to foreigners and the enforcement of municipal law over the waters in question. Now, however, Appellant would modify and narrow the first requirement so that, instead of requiring proof of authority by various means, the first requirement would be rephrased to read: "Whatever acts of sovereignty are shown, they are meaningless unless there is also proved a refusal of the right of innocent passage over the area claimed by the nation asserting the historic right." There is no support for this unduly narrow view expressed in the *Juridical Regime* or in any other reference which the State has examined.

Moreover, the authorities recognize that there was no question that when Delaware Bay and Chesapeake Bay were adjudicated to be historic bays, their waters became inland waters of the United States. (1 Op. A.G. 32 (1852)) (Ex. "N"; *Stetson v. U. S.*, No. 3993, Class 1) (2d Court of Commissioners of Alabama Claims; Ex. "O"; See also *Historic Bays* 111; Ex. 52).

Lastly, the Convention on the Territorial Sea and the Contiguous Zone itself refutes the United States' contention that Cook Inlet is territorial sea but not inland waters. (Ex. 53). The rules of Article 7, it will be noted, are prescribed solely for the purpose of defining the baseline for the measurement of territorial sea across the mouths of or within bays, and that waters inside that line are inland waters. Accordingly, the only sensible meaning of Section 6 of that Article (the exception of historic bays) is that a baseline drawn across the bay's entrance encloses inland water.[34]

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34. Paragraph 116, *Historic Bays,* indicates that a bay can contain territorial sea only if the recognized territorial sea of the bay were equal to the width of the territorial sea in the bay. Thus, since one-half of the distance between the headlands of Cook Inlet is 23 miles, the territorial sea of the United States must of necessity be 23 miles. This, of course, is not the case.

PART THREE

THE DISTRICT COURT CORRECTLY APPLIED THE STANDARD OF PROOF FOR THE ESTABLISHMENT OF THE ELEMENTS OF COOK INLET AS AN HISTORIC INLAND WATER BAY.

Here we are concerned with whether Alaska's burden of proof was measured by the ordinary rule— preponderance of evidence—or by a higher standard—clear beyond doubt. In approaching this question, the trial court said:

> "The final qualification concerns the quantum of proof required for a showing of historic title. The expression 'clear beyond doubt', as it first appeared in *United States v. California,* 381 U.S. at 175, could very well not have been intended by the Supreme Court to establish such a high standard of proof in all cases. The context in which that phrase appeared pertained to the legal effect of a disclaimer by the United States in the face of questionable evidence of historic title. The context of this case is clearly distinguishable. Further, there is other language in that case which implies that no rigorous standard of proof is required to prove historic title. 381 U.S., at 174. Nor do the long respected commentators of international law appear to require a rigorous standard of proof. Juridical Regime 158. Despite this uncertainty over the burden of proof, this Court will adhere to the higher standard of proof, for the reason the Court finds the State of Alaska has satisfied the requirements for establishment of historic title even under the more rigorous standard." (P. 6, Opinion).

The line to be drawn between proof, on the one hand, that meets the preponderance standard and proof, on the other hand, that attains the higher standard, is a line that

is difficult to draw. In any case, as Alaska views the problem, the task of evaluating the evidence in the first instance is necessarily the responsibility of the trial judge. Here the Court could have, and with good reason, repudiated the higher standard. Instead, it accepted the federal government's position. Since this leaves its attorneys no other room to complain, they fall back upon the simple assertion that the trial judge did not do what he said he did. Obviously Alaska does not agree with this easy indictment and unilateral conviction of the distinguished trial judge. Neither do we believe that this Court can or should ignore the lower court's Findings in the absence of a showing that they were clearly erroneous.[35] Thus Appellant's argument must be construed as a desperate effort to have this Court close its eyes and disregard the voluminous evidence which was placed before the District Court. For our part, no other conclusion is possible than, having failed to dislodge the Court's Findings in the first fifty-four pages of its brief, Appellant is willing to take a last shot at the trial judge in the closing pages of the brief.

Alaska's position, in short, is that it met the test—whatever that test may be. It is our view that the test should have been the "preponderance of evidence" burden. But, in the light of Judge von der Heydt's more rigorous

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35. In applying the "clearly erroneous" rule, the courts have reached the same conclusion where issues must be proved by "clear and convincing evidence." *Carlson v. Naddy,* 181 Minn. 217, 232 N.W. 3 (1930), *Taylor v. Bunnell,* 133 Cal. App. 177, 23 P.2d 1062 (1933). As this Court once stated, it can ordinarily overturn fact findings of the trial court only when it is "left with a definite and firm conviction that a mistake has been committed in any of the trial court's findings." *Fluor Corp. v. United States ex rel. Mosher Steel Company,* 405 F.2d 823 (9th Cir. 1969), cert. den., 394 U.S. 1014, 89 S.Ct. 1632, 23 L.Ed.2d 40 (1949).

requirement, insisted upon by the federal attorneys, Alaska accepted and met that test also. The question, therefore, is not before this Court because the trial judge applied the more rigorous standard.

Appellant's brief refers to the so-called disclaimers as a reason for the application of the "clear beyond doubt" rule. We do not deem it necessary, therefore, to discuss the alleged disclaimers; nevertheless, should the Court desire to examine them closely, we invite attention to Part VI of the trial judge's Findings. (103 through 111; R. 3800-3802). We have nothing to add which would be helpful to this Court in evaluating the disclaimers.

CONCLUSION

In a trial that lasted several weeks and amassed a voluminous record, the State of Alaska proved the three prerequisites for the establishment of lower Cook Inlet as an historic inland water bay. Accepting the burden of proving its case clear beyond doubt, Alaska established and the lower court properly found: (1) the exercise of sovereignty over all of Cook Inlet; (2) over a continued period of time beginning at least in 1906 and possibly earlier and lasting up to the time of this dispute, and (3) with the acquiescence of foreign nations. A close study of this record, we believe, will reveal a conscientious and meritorious consideration of the trial judge to all the evidence, judging its weight and resolving factual disputes where they existed. The conclusion is also inevitable that the trial judge correctly applied the undisputed or uncontested legal principles to the controlling facts. There-

fore, Alaska urges that the judgment of the District Court should be affirmed.

Dated, October 29, 1973.

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APPENDIX B

No. 73-2400

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellant,*

v.

STATE OF ALASKA, *Defendant-Appellee.*

On Appeal From The United States District Court For The District of Alaska

SUPPLEMENTAL BRIEF OF THE STATE OF ALASKA, APPELLEE

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No. 73-2400

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellant,*

v.

STATE OF ALASKA, *Defendant-Appellee.*

On Appeal From The United States District Court For The District of Alaska

SUPPLEMENTAL BRIEF OF THE STATE OF ALASKA, APPELLEE

The reply brief of the United States is misleading and erroneous. Continuing the strategy it pursued in the trial court, the United States seizes upon more bits and pieces of evidence here and there in disregard of the record as a whole. In other instances it makes factual claims and legal arguments which are extravagant and demonstrably wrong. And, as the State sees it, Appellant has distorted simple principles of law

in a vain attempt to cover up an almost total lack of evidence to support its position.

The stakes at issue here are so important to the economic welfare and future of its people that Alaska has deemed it appropriate to ask leave for the filing of this short supplemental brief.

I.

ALL OF COOK INLET IS INLAND WATER, NOT TERRITORIAL SEA

It is not necessary to elaborate extensively on the point made in Alaska's brief that the United States impermissibly narrows the requirements for an historic bay in arguing that the only evidence of sovereignty over inland waters is evidence of those acts which interfere with innocent passage of foreign nations (Compare pp. 35-40, Alaska's brief with p. 8 United States reply brief). But it cannot be over-emphasized that the United States strains beyond the breaking point the *Juridical Regime*, the authority upon which it relies. Nothing could be clearer than what is said at Paragraph 163 of that document:

> ". . . the dominant opinion, as gathered from the statements assembled in the memorandum [*Historic Bays*, Memorandum by the Secretariat to the United Nations, Document A/Conf. 13/1] (Exhibit 52), seems to be that 'historic bays' the coasts of which belong to a single state are internal waters. This was to be expected considering that it is generally agreed that the waters inside the closing line of the bay are internal waters and that the territorial sea begins outside that line."

The United States argues that "the evidence is uncontested that fisheries agents recognized that foreign vessels had the right of innocent passage in Cook Inlet" (p. 8, Appellant's Reply Brief). From that statement it concludes that Cook Inlet is at best territorial sea. And it blandly asserts "the State is entirely wrong about what the record discloses." Here, it would appear, we have an argument about what is or what is not in the record—a simple dispute which certainly can be resolved by looking to the record sources upon which Appellant relies. Appellant has cited a number of depositions, one of which was Skerry Dep. pp. 29, 31. There we find the following succinct testimony by Mr. Skerry (p. 29):

> "Q. Would you have required, for instance, if a foreign vessel wanted to fish Cook Inlet with gear, would they have been required, also, to register?
>
> A. He wouldn't have been allowed in there in the first place. He could have come in Force Majeure or something of this sort. But to fish, no."

This hardly reflects a note of welcome to foreign vessels from Mr. Skerry, who was agent in charge of the Cook Inlet District for the federal Bureau of Commercial Fisheries from 1955 through 1959. It may be that on occasion he saw shipping vessels, foreign or otherwise, crossing Cook Inlet en route to Anchorage—a fact of no legal significance whatever. The thrust of his testimony was his claim of sovereignty over Cook Inlet on behalf of the United States Government.

Appellant cites Studdert Dep. p. 22. There we find Studdert, another federal official, testifying with regard to foreign vessels:

"Q. And why would you have gotten the vessel out of there, Mr. Studdert?

A. Well, if it was a foreign ship, why you would not only get her out, but you would seize the ship, you know, if you could."

Another record source upon which the United States relies is Branson Dep. p. 39, who testified:

"Q. You are not aware that they [Japanese ships] ever entered the area bounded by a line from Cape Douglas through the Barren Islands on to Cape Elizabeth?

A. I've never seen one in there.

Q. And what about vessels of any other nation?

A. North of a line between Cape Douglas and the Barren Islands, no" (pp. 39-40).

A Mr. O'Dale operated a mail boat in Cook Inlet in the early 1900's. Appellant relies upon his deposition, pp. 20-21. There we find him testifying with regard to foreign boats as follows:

"A. No. We never had any foreign boats in there at that time. But there was a foreign boat come in. It was a freighter or a passenger boat or something which they had a license to do."

"Q. Did you ever see any foreign fishing boats?

"A. No."[1]

1. There are other deposition references upon which Appellant relies. Since the Court can and undoubtedly will study these references, we shall not prolong this brief by extensive quotes from the record. For convenience, however, we have attached an Appendix in which each deposition reference, including more extensive quotes from the Skerry, Studdert, Branson and O'Dale depositions, are dealt with more fully.

It is true that Anchorage is and has been for many years, the largest seaport in the State of Alaska. Foreign vessels come to Anchorage as they do to other American ports such as New York and San Francisco. And, as countless thousands of people have seen foreign vessels traversing San Francisco Bay to enter San Francisco Harbor, so there is evidence here that witnesses have seen some few foreign vessels crossing Cook Inlet to enter the Anchorage Harbor. This is the most that can be said of Appellant's evidence of foreign shipping.[2]

But the presence of a few foreign shipping vessels in Cook Inlet is no more evidence that Cook Inlet is a territorial sea than the presence of a thousand foreign shipping vessels in San Francisco Bay is evidence that San Francisco Bay is a territorial sea. The presence of foreign vessels in Cook Inlet is adequately explained by Colombos, *The International Law of the Sea* (6th Rev. Ed., (1967) pp. 87-88) wherein he stated:

"Interior or national waters, on the other hand, consist of a state's harbours, ports and roadsteads and its internal gulfs and bays, straits, lakes and rivers. In these waters, apart from special conventions, foreign states cannot, as a matter of strict law, demand any rights for their vessels or subjects, although for reasons based on the interests of international commerce and navigation, it may be asserted that an international custom has grown in modern times that access of foreign vessels to these waters should not be refused except on compelling national grounds."

2. We have previously dealt with the trial court's treatment of the few isolated instances of Canadian halibut fishing boats.

II.

THE EVIDENCE OF SOVEREIGNTY OVER COOK INLET IS CLEAR

The United States clearly misreads the *Juridical Regime* in asserting that a fair reading of it, and citations contained therein, "establishes that acts must affect foreign nations to constitute sovereignty" (Rep. Br. p. 4). A fair reading of the *Juridical Regime* must lead to the conclusion that there is no hard and fast rule as to what acts must be done to constitute sovereignty. Two criteria, however, stand out: *First*, the acts must be under municipal (i.e., domestic) law of the nation exercising the authority, *Juridical Regime*, Paragraphs 85-93. *Second*, the acts must be undertaken to the extent—but only to the extent—necessary to maintain authority over the area, *Juridical Regime*, Paragraphs 98-103. Contrary to the United States' assertion that the critical question relates to the individuals or entities against whom sovereignty is exercised, the critical question in fact is under what authority was the sovereignty exercised.

The proof of Alaska, discussed in its brief, demonstrates that, measured by the foregoing principles, there was uncontradicted and ample evidence of the exercise of sovereignty over Cook Inlet by Russia, the United States and Alaska. First, the intent of these governments to exercise sovereignty was expressed by deeds. Second, sovereignty was exercised to the extent necessary to maintain it both with respect to domestics and aliens.

A. Russian Sovereignty

While it is true that the United States protested the Ukase of 1821 (Rep. Br. p. 13), it does not follow

that Russia abandoned its claim to Cook Inlet. Russia by treaty permitted the United States for ten years subsequent to 1824 to "frequent without any hindrance whatever, the interior seas, gulfs, harbors, and creeks upon the northwest coast for the purpose of fishing and trading . . ." (Ex. Y, p. 154). After having been informed by Russia that the ten year period provided for in the 1824 treaty expired, the United States Ambassador in St. Petersburg wrote the State Department in 1838 (Ex. X, pp. 243-244):

> "The stipulated freedom to trade unmolested within the interior seas, bays, creeks, and harbors of the northwest coast, being regarded under our construction of the treaty, as solely applicable to occupied places, and having ceased upon the expiration of ten years, it becomes essential to the safe prosecution of American enterprise and traffic in these remote regions that we should ascertain, if possible, which of the interior seas, bays, creeks, and harbors fall, by actual Russian settlement, under exclusive Russian dominion."

Of course the evidence is undisputed that Cook Inlet, by actual Russian settlement, fell under exclusive Russian dominion (See pp. 8-9, Alaska's brief).

B. United States Sovereignty, Regulations And Proclamation

The United States relies on an absence of express legislative or executive proclamation that the area in question is internal waters (Rep. Br. p. 7). The argument of the federal Government proceeds with the proposition that the United States has traditionally recognized that jurisdiction over territorial waters ex-

tended only 3 miles from the coastline. This being so, the United States disposes of the White Act and the Alien Fishing Act by construing the language thereof as indicating an assertion of jurisdiction only over the area in Cook Inlet within 3 miles of the coastline.

The foregoing argument is misplaced for at least two reasons. *First,* while it is true that the three mile limit has been a cornerstone of the United States' position in international law, it is likewise true that the doctrine of historic bays has been equally ingrained. Witness, for example, such bays as Delaware Bay and Chesapeake Bay, traditionally claimed and recognized as United States historic bays.

Thus, there are two co-existing and well established doctrines of law—the 3-mile limit and historic bay doctrines. When the United States seizes upon the first doctrine to the exclusion of the second, it assumes the point at issue, to wit: that waters outside the 3-mile limit from the Cook Inlet coastline were not claimed as an historic bay. The fallacy of such reasoning is at once obvious.

Second, the argument will not withstand close historic research. The language of the various statutes and proclamations (The Alien Fishing Act, The White Act, The Southwestern Alaska Fisheries Reservation) is not an express assertion of sovereignty over all of Cook Inlet because, so Appellant argues, the language in the proclamations or statutes, such as "waters of Alaska under the jurisdiction of the United States" is not defined. Let us assume, arguendo, that the phrase "waters of Alaska, etc." is vague or inconclusive. This brings us necessarily back to the fundamental question: Was jurisdiction

(or sovereignty) asserted by the United States over Cook Inlet as waters of Alaska? Put another way, the question is: Were the waters of Cook Inlet claimed by the United States as "waters of Alaska under the jurisdiction of the United States?" To answer the question, it is necessary to trace the history of various statutes that have been enacted with respect to the waters of Alaska. It is necessary also to depict the claims to Cook Inlet at the time each statute and regulation was promulgated.

1. R.S. 1956 and the Kodiak Case

The earliest statute, Article 1956, was involved in the *Kodiak* case. It provided that "no person" shall kill otter or other fur-bearing animals "within the limits of Alaska territory or in the waters thereof." Thus it was that the Court in the *Kodiak* case was faced with the same contention now urged by the United States, to-wit: that since the defendant had allegedly killed fur-bearing animals more than 3 miles from the shoreline of Cook Inlet, the statute was not applicable, the phrase "in the waters thereof" being construed to mean a distance of 3 miles from the shore of Cook Inlet. As we see it, this is precisely the contention now urged by the United States.

The Court said:

> "The contention is not a valid one.
>
> * * *
>
> . . . it can hardly be claimed that any portion of Cook's Inlet is 'high seas', within the accepted meaning of the phrase, for it is well landlocked by islands extending from Kodiak Island to Cape Elizabeth, on the east, and can only be entered by

coming in near some of these islands, or by the way of Shelikof straits.
[53 Fed., p. 128]"

The Court, it will be noted, recognized a fundamental, geographical distinction between Cook Inlet and areas such as the Bering Sea (see *Whitelaw v. U. S.*, 75 Fed. 513 (9th Cir. 1896)) and the open Gulf of Alaska (see *Pacific Trading v. U. S.*, 75 Fed. 519 (9th Cir. 1896)).

Having taken the unique geographical status of Cook Inlet into consideration, the Court made clear that its basis for jurisdiction rested upon assertions of sovereignty over Cook Inlet by the United States:

> "To apply this reasoning to the case at bar, it may be said that Commander Johnson, with the United States ship Mohican, was, by orders of the government, cruising along the coast of Alaska, and within the waters of Cook's Inlet at the time he made this seizure. How, then, did it happen that he received such orders. It must be presumed, I think, that they were given in the assertion on the part of this government of territorial jurisdiction over these waters. And, if I am correct in this, then it is not the province of courts to participate in the discussion of the questions arising out of this claim of jurisdiction or dominion, for they are of a political nature, and not judicial. National dominion and sovereignty may be extended over the sea as well as over the land, and in our government, when Congress and the President assert dominion and sovereignty over any portion of the sea, or over any body of water, the courts are bound by it." (53 Fed. p. 130)

The quoted language of the Court in *Kodiak* is simply a paraphrasing of the requirement that, in the

emergence of histo: :itle to inland waters, there must be an assertion of jurisdiction or sovereignty by the claiming nation—a principle of law which no one, including Appellant's counsel, would contend has been overruled.

In further attacking the *Kodiak* decision, the United States has argued the KODIAK was an American vessel and its seizure was not an act effective upon foreign nationals (Appellant's Rep. Br., p. 15). While we would concede that the clearest exercise of dominion is that exercised against foreigners (when and if they appear), the United States misses the point of the *Kodiak* case. Obviously, neither a United States citizen nor an alien can be convicted of a statutory violation unless he comes within the ambit of the statute. In the *Kodiak* case the statute, as we have seen, prohibited any person killing fur-bearing animals "within the limits of Alaska territory, or the waters thereof." If the defendant, whether he be American citizen or alien, had taken the fur-bearing animals outside the waters of Alaska, he obviously would not have violated the statute. This necessarily led the Court in the *Kodiak* case to a determination of the limits of the waters of Alaska, a decision which, in the light of the express wording of the statute, was an essential finding in determining the guilt or innocence of the defendant, irrespective of his nationality. Thus, the Court's decision that all of Cook Inlet was within the national dominion and sovereignty of the United States was just as clear an assertion of sovereignty by the Executive and Legislative Branches of our Government as if the indictment had been brought against a foreigner. The point was expressly made by this Court in *Whitelaw v. U. S. (LA NINFA)*, 75 F. 513 (9th Cir.

1896). There Article 1956, insofar as the Bering Sea was concerned, had been amended so as "to include and apply to all of the dominion of the United States in the waters of the Bering Sea; . . .," (75 F. 513, 515). Against the Government's argument that this statute could reach American citizens even on the high seas, the Court stated:

> "These questions have no bearing as to the interpretation to be given to the statutes under review. These statutes, whatever their interpretation may be, must be applied to citizens and subjects of all nations, and were not intended to apply only to citizens, subjects, and vessels of America." (75 F. p. 518)

Hence, the statute was operative against aliens and citizens alike in waters over which the United States had jurisdiction.

Appellant argues that *Kodiak* was overruled by this Court in *Whitelaw v. U. S., supra,* and *Pacific Trading Co. v. U. S.,* 75 Fed. 519 (9th Cir. 1896). Since the *Kodiak* decision was not even mentioned in either of these decisions, this is indeed a bold assertion. Certainly it was not expressly overruled; and neither was it impliedly overruled. The question of the dominion of the United States in the Bering Sea had been settled by an arbitration award, pursuant to treaty between United States and Great Britain, in the Bering Sea arbitration. Thus when this Court was faced with the status of the Bering Sea in *Whitelaw,* it simply, and quite properly, stated:

> "It is undoubtedly true, as has been decided by the Supreme Court, that in pending controversies doubtful questions which are undecided, must be met by the political department of the Government. . . . But in the present case there is no pending question left for the political department to decide. It has been settled. The award is to be construed as a treaty which has become final. A treaty, when used and agreed to, becomes a supreme law of the land. It binds courts as much as an act of Congress."
>
> (75 Fed. 513, 517-518)

As Judge von der Heydt pointed out in the Court below, when he addressed himself to the facts peculiar to this case and stated:

> "The Bering Sea Fur Seal Arbitration did not adjudicate the status of Cook Inlet. In fact the United States lost the arbitration principally because it could not prove that Russia exercised sovereignty over the Bering Sea."
>
> (Findings of Fact No. 21) (R. 3782)

The decision in *Alexander,* decided the same day as *Whitelaw* involved the open high seas in the Gulf of Alaska, an area over which no dominion had been asserted and an area recognized as geographically different from Cook Inlet. (75 Fed. 519)

The *Kodiak* decision was rendered in 1892. Presumably it was published and widely distributed and it is Alaska's contention that all foreign countries knew, or should have known, its content.

2. The Alien Fishing Act, The Southwestern Alaska Fisheries Reservation and The White Act

With this precedent before it—a clear-cut judicial holding that Cook Inlet was water over which the United

States had asserted jurisdiction—Congress enacted The Alien Fishing Act in 1906 and The White Act in 1924. The operative words in The Alien Fishing Act were "waters of Alaska under the jurisdiction of the United States," while in The White Act the key words were "any of the waters over which the United States has jurisdiction." Both statutes have substantially the same language and both have language almost identical with Article 1956.

Can it be seriously argued that the Congress did not or could not have taken the *Kodiak* precedent into account when, on two occasions, 1906 and 1924, it enacted significant legislation affecting Cook Inlet? Or can it be seriously contended that foreign nations were not put on notice of the claims of the United States to Cook Inlet? It is little wonder that Appellant is now left only with the argument that this Court has overruled the *Kodiak* decision.

Be that as it may, Appellant apparently would have this Court ignore the next 35 years during which time, from 1924 to 1959, the Executive Department, continuously and year after year, defined Cook Inlet as including "*all* adjoining waters north of Cape Douglas and west of Point Gore (including the Barren Islands)" (Emphasis added).

To say that these executive regulations are not clear is to defy the English language, particularly when their judicial and legislative precedents are taken into account. To claim that these regulations were not brought to the attention of all foreign nations is to ignore the fact that each year, for more than three decades, they were published and distributed throughout the world.

We suggest that, if today the author of the regulations was given the chore of asserting United States sovereignty over Cook Inlet, he would have difficulty in finding clearer and more precise words than the words "all adjoining waters north of Cape Douglas, etc."

3. Enforcement of Fishery Laws and Regulations in Cook Inlet

(a) Patrols

The United States' assertion that there was no need to patrol Cook Inlet until 1947 and that such patrols thereafter were conducted pursuant to treaty clearly disregards the *Kodiak* case and the unrefuted testimony of William Studdert who arrested two American halibut vessels fishing without a permit in the disputed area in 1924. Moreover, the uncontradicted testimony of numerous witnesses is that it was The White Act regulation and not any treaty that gave them authority to enforce The White Act and The Alien Fishing Act over the entire disputed area. Typical of that testimony is that of Don Roberts, who from 1951 through 1954 was assigned to the Cook Inlet area and was later the federal Bureau of Commercial Fisheries Agent for enforcement purposes. Mr. Roberts testified:

> "Q. . . . in 1954 while you were agent in charge of enforcement in the Cook Inlet, you did determine the geographic area over which you had authority to enforce these regulations?
>
> A. Yes, from these published regulations.
>
> Q. All right. In other words, you did determine the area, and in making that determination you relied on these published regulations?

A. That is right.

. . .

Q. All right. Now, you stated you had determined the geographical area over which you had authority to enforce the regulations in that you had relied on the regulations. When you referred to the regulations, was it those 1954 regulations which you have before you?

A. Yes, this would be correct.

Q. Now, is the regulation upon which you relied set forth at page 34?

A. Yes.

Q. And what regulation is that?

A. Cook Inlet Area, Part 109.

Q. All right. Now, would you read the number, and read the regulations please?

A. You want which? You want the particular section, or—

Q. That one you read, the Cook Inlet Area.

A. Well, Cook Inlet Area, Section 109.1. 'Definition of Cook Inlet Area is hereby defined to include Cook Inlet and its tributary waters and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.'

Q. All right. Now, that is the regulation you relied on; is that correct?

A. Yes, that is correct."

(Tr. 313-314).

That testimony is typical of numerous witnesses who testified that the regulation above quoted constituted the authority for patrolling the entire Inlet for purposes of enforcing The Alien Fishing Act and The White Act. See pp. 24-50, First Amended Trial Brief of Alaska (R. 1736-1762).

(b) Specific Acts of Enforcement by the United States and Alaska Within the Disputed Area of Cook Inlet

The United States seeks to disregard the fact that officials of both the United States and Alaska made documented arrests of individuals and vessels within the disputed area. The basis for this disregard is that the charges upon which the arrests were grounded were dismissed in some instances (Rep. Br., p. 23). The United States fails to indicate that the dismissals were not on jurisdictional grounds, but, like the *Kodiak* case, were dismissals based on the merits.

Hence, the charges against Court Marchant in 1951 were dismissed because the spacing of the drift gill nets was a matter which he could not control (Marchant Dep. p. 9). A similar result was reached in the 1951 case against George A. Mosher (Mosher Dep., p. 7).

Earl Solie was arrested for a spacing violation in 1951. His case was dismissed because the error in spacing was unavoidably caused by the tide (Solie Dep., pp. 7-8). A similar charge was levelled against Harley Adams in 1957 and it was likewise dismissed on the basis that the tidal action made the net entanglement unavoidable (Adams Dep., p. 8).

Sverre Omsund was arrested in 1957 for a violation in the disputed area and was fined $150.00 (Omsund Dep., p. 6).

Claude Shea, who was a Commercial Fisheries Agent in Cook Inlet for the Fish and Wildlife Service in 1953, while on patrol observed a vessel in the disputed area with its gear out during a closed period. The vessel and gear were forfeited (Shea Dep., pp. 14-16).

In 1970 Frank De Rossitt was arrested by the Alaska Department of Fish and Game for fishing in a closed area. The case was dismissed because an error in the wording of the regulation made it unenforceable (Tr. 666). The same result occurred in the case of *Kjarten Ask* (Tr. 673).

Based on the foregoing, it is clearly inaccurate for the United States to state, as it does at page 24 of its reply brief, "However, in at least three of the seven instances relied upon by Alaska, there is no evidence in the record to establish the basis of the dismissals."

4. The Tariff Commission Maps

The United States comments on the 1930 Tariff Commission chart incident and states that the charts were withdrawn by the Secretary of Commerce because "he thought it unwise to invite the attention of foreign nations to the extent of United States jurisdiction off the coast of Alaska." (Rep. Br., p. 23). The best comment on the United States' interpretation is the reasoning of the Secretary of Commerce in the exhibit itself. In his letter dated October 20, 1930, the Secretary of Commerce wrote concerning an alleged line which caused the high seas to indent into Cook Inlet:

> "In my opinion, the designation on this chart of territorial waters and high seas may prove exceedingly harmful and detrimental to American fisheries industry. In spite of the statement that the chart has no official sanction or significance in respect to what constitutes high seas or territorial waters, it seems to me that it is, in effect, *an invitation to foreign fishery interests to invade waters which heretofore have always been considered as open only to*

> *nationals of the United States.*" (Ex. AR) (Emphasis supplied).

Hence, the charts were withdrawn (Ex. AR).

5. The Gharrett-Scudder Line

The United States asserts in its reply brief that it is surprised in that Alaska claims that the Gharrett-Scudder line is a system of straight base lines (p. 26). Nowhere does Alaska claim that the Gharrett-Scudder line is a straight base line as that term is used in the Convention on the Territorial Sea and Contiguous Zone. Indeed, it could not be, since the line pre-dated the Convention by at least one year. The line is thus no more a straight baseline than any other line which must of necessity be a "baseline" from which to measure the territorial sea (Ex. D-B, E-X; Dep., Scudder, p. 10).

The United States attempts to derogate from the effect of the Gharrett-Scudder line by calling it a fisheries management line (Rep. Br., p. 29). That argument simply enhances the significance of the line because of the fact that, in Cook Inlet, fisheries management was of the essence of sovereignty. Moreover, the argument of the United States ignores the fact that the purpose of the line was to delineate the high seas from waters of Alaska (Ex. DC, DD). The regulation which the line depicts goes beyond fisheries management purposes. The regulation and the line describe the "waters of Alaska" in terms of the 3-mile limit. The fact that the line describes the 3-mile limit in areas, such as the Arctic Coast, where there could not conceivably be any salmon net fishing, underscores the point. Thus, there is clearly indicated a broader purpose than that of fisheries management.

The Gharrett-Scudder line represents more accurately than anything else, what in fact the United States claimed to be historic boundary of its jurisdiction in Alaska. This claim was sent to and acquiesced in by Canada.

6. Alleged Canadian Halibut Fishing

The United States in its reply brief cites evidence which it asserts shows that there was no consent by the United States to Canadians fishing for halibut in Cook Inlet (Rep. Br., p. 36). But, upon consideration of all of the evidence, the trial court resolved this factual issue in favor of Alaska (Finding 101; R. 3799-3800). On this point the testimony of a witness called by the United States, Howard Baltzo, is significant. Mr. Baltzo testified that the halibut fishery in Cook Inlet had less priority in the United States' view than the number one fishery, salmon. If a Canadian vessel fishing for salmon had been observed more than three miles from shore in Cook Inlet, Mr. Baltzo was certain that the vessel would have been boarded, or at the very least permission to board would have been sought (Tr. 186-187).

C. Alaskan Sovereignty—Shelikof Strait Incident

The United States argues in its reply brief that the agreement entered into by the Japanese fishing company (Ex. IV) did not pertain to Cook Inlet (pp. 31-32). The Japanese Government was not laboring under this misapprehension. On the contrary, it expressly recognized that the agreement entered into between Alaska and the Japanese fishing company applied to Cook Inlet. The protest of the Japanese Government stated in part:

> "The state authorities kept the captains and the ships concerned under detention until about 10:30 o'clock of April 19, at which time the men were set free on bond, and the ships released, after being made to agree that the fleet would not conduct fishing operations in Shelikof Strait and *Cook Inlet*." (Ex. II) (Emphasis supplied).

III.

CONCLUSION

In *Louisiana*, the Supreme Court stated:

> "Whether particular waters are inland has depended on historical as well as geographical factors. Certain shoreline configurations have been deemed to confine bodies of water, such as bays, which are necessarily inland." (394 U.S. 11, 23).

Appellant apparently would ignore this language in *Louisiana*, but instead seizes upon a footnote reference in the opinion to historic territorial seas.[3] In the process the United States would now have this Court create from

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3. There may be other bodies of water, such as straits or archipelagoes which are not necessarily inland. Thus the Supreme Court in *Louisiana* stated: "But it has also been recognized that *other* areas of water closely connected to the shore, although they do not meet any precise geographical test, may have achieved the status of inland waters, by the manner in which they have been treated by the coastal nation." (394 U.S. 11, 23) (Emphasis added) As to these other areas, the Court's footnote reference to historic title over territorial waters might be applicable, depending, as the Court noted, on the kind of treatment or jurisdiction exercised over the area. That is to say, as to these other waters the nation may have exercised such sovereignty as to make them historic territorial seas rather than historic inland waters. Here we are not dealing with another area of water, but we are dealing with waters in a bay that are inland.

whole cloth a novel juridical entity—an historic, necessarily inland, territorial sea bay. This would appear to be a self-contradictory kind of bay and Cook Inlet would be the first of its kind in all of jurisprudence. For the United States has cited no case, and neither has Alaska, where a historic, geographically inland, water bay has been declared to be a historic territorial sea in the sense these terms are currently used. Such a creation is surely a figment of imagination.

The trial court, so Alaska contends, properly and necessarily considered the geographic factors pertaining to Cook Inlet. When these factors were taken into account, the trial court had to find, and the United States conceded, that Cook Inlet was a landlocked, necessarily inland bay (see, for example, Finding 5; R. 3779). So much for geographical factors.

The lower court then turned to a consideration of the historical factors. Here the evidence adduced by Alaska accounts in large part for the massive record now before this Court. The trial judge followed the rule enunciated in *Louisiana* wherein the Supreme Court stated:

> "Historic bays are not defined in the Convention, and the term therefore derives its content from general principles of international law. As the absence of a definition indicates, there is no universal accord on the exact meaning of historic waters. There is substantial agreement, however, on the outlines of the doctrine and on the type of showing which a coastal nation must make in order to establish a claim to historic waters. But because the concept of historic water is still relatively imprecise and *its application to particular areas raises primarily factual questions,* we leave to the Special Master—as we did in *United States v. California*—the task of determining in the first instance whether any of the waters off the Louisiana coast are historic bays." (394 U.S. 11, p. 75) (Emphasis added).

We return, then, to Alaska's original hypothesis. The parties are in substantial agreement on the outlines of the doctrine of historic inland bays and on the type of showing which must be made in order to establish a claim to historic inland waters. This being so, the application of the doctrine to the particular area of Cook Inlet raises primarily factual questions which should be left to the trier of the facts. These questions engaged the attention of the trial judge throughout an extensive trial on the merits. His factual findings are squarely supported by the record. In any event, they are not clearly erroneous; hence, they should be affirmed.

Dated, Juneau, Alaska,

January 9, 1974.

Respectfully submitted,

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(Appendix Follows)

APPENDIX

The evidence cited by the United States does not support the claims the United States attributes to it. An enumeration of that evidence follows:

1. *Wilson Deposition.* (Mr. Wilson was a Fisheries Management Enforcement Officer in Cook Inlet from 1955-1962)

(a) Page 14:

"Q. Did you observe any Canadian vessels that may not have been fishing in Cook Inlet?
A. Yes.
Q. Where did you observe them?
A. I have seen them at anchor in Seldovia Bay, and I have seen them fishing offshore east of Chugach Islands.
Q. By 'offshore' do you have any idea as to how many miles offshore, with reference to more than three or less than three?
A. Well, it could have been probably between three and five, somewhere around there."

(b) Page 20:

"Q. Do you recall the year when you saw the Canadian vessel—where was it in Cook Inlet?
A. Seldovia.
Q. Seldovia. Do you recall the year?
A. No.
Q. Would you give a general range? Was it early in the 1950's or late in the 1950's?

A. No, I really couldn't. I can't connect it with any other activities.
Q. Do you know anything about circumstances of their being there?
A. I believe I heard at that time they were just in there to wait out their weekly closed period."

Seldovia Bay is without dispute inland waters of Alaska even under the United States' theory (Ex. B). The only possible inference is that foreign vessels were permitted, unmolested, even in inland waters. The area "off shore east of Chugach Islands" may not be in the disputed area. In any event Canadian halibut fishing is, for reasons set forth in Alaska's brief (pp. 28-31), insignificant and not controlling so far as the issues in this litigation are concerned.

2. *Skerry Deposition* (Mr. Skerry was agent in charge of the Cook Inlet District for the Bureau of Commercial Fisheries from 1955 through August 1959)

(a) Page 29:

"Q. Would you have required, for instance, if a foreign vessel wanted to fish Cook Inlet with gear, would they have been required, also, to register?
A. He wouldn't have been allowed in there in the first place. He could have come in Force Majeure or something of this sort. But to fish, no.
Q. What is the basis upon which you make that statement?
A. Well, to my knowledge, there is no law that I can recall precisely, but foreign vessels were not permitted to fish in the lines as drawn on this—set out in the regulations. In other words, we considered that that was Cook Inlet and it was for American fishermen."

(b) Page 31:

> "A. I can't recall. I think what you are perhaps thinking about is the possibility of some Canadians fishing for halibut [sic]. I have no knowledge that any Canadian long liners did, in fact, fish in the Cook Inlet area. I know they came in Force Majeure as any other vessel is permitted to do. To fish, I can't say.
> Q. What do you refer to when you speak of Force Majeure?
> A. I am talking about conditions of storm and wind, when winds get to 60 knots or more.
> Q. In other words, it is something where the vessel is in peril and has to come in to shore for its physical safety?
> A. Right."

This testimony demonstrates what the *Juridical Regime* asserts—that sovereignty over Cook Inlet as inland waters was exercised by excluding foreign fishermen therefrom, except for the obvious humanitarian considerations given their safety. Thus, a foreign vessel could enter Cook Inlet, and even bays such as Seldovia Bay which are under any theory inland waters, if its physical safety demanded it.

3. *Larsen Deposition* (Mr. Larsen was agent in charge of management and enforcement in Cook Inlet for the period 1945 through 1958)

(a) Page 34:

> "Q. Now, so far as you can remember, within the period 1945 through 1958, when you were in the Cook Inlet area, were there any foreign fishing activities carried out within the area designated on Deposition Exhibit 1 as Cook Inlet?

> A. Well, from time to time the Canadian halibut fishing boats would be found in that area.
> Q. All right.
> You are talking about the area generally north of the line from Cape Douglas to Gore Point?
> A. Yes.
> Q. All right."[1]

4. *Costello Deposition* (From 1951 through 1955 Mr. Costello was the Fishery Management Biologist in charge of the Cook Inlet District, Alaska)

(a) Page 29:

> "Q. During the time when you were in the Cook Inlet District were you aware or did you observe any activities by foreigners, by foreign fishing vessels in the area described as Cook Inlet as it appears on Deposition 1?
> A. The only occurrence that I can call clearly to mind, and I can't be sure of the year, was two boats that were said to be Canadian boats were fishing somewhere in the area between Seldovia and Homer. They were apparently halibut fishing although I didn't see them put their gear in the water or anything. But they were somewhere in Kachemak Bay."

(b) Page 41:

> "A. Well, sighting of a foreign vessel in Cook Inlet certainly would not be a violation.
> Q. If you saw a foreign vessel fishing more than three miles from shore in Cook Inlet would that

1. Mr. Larsen later testified that he could recall no specific instances or dates of Canadian halibut fishing in Cook Inlet, and that the frequency of his sightings was "very, very little." (Larsen Dep., p. 35)

sighting be routine or would you take the other measure of which you previously spoke?

A. If this had of occurred, as a matter of judgment, I feel I would have requested information from my superiors.

Q. From your superiors where?

A. In Juneau.

Q. In Juneau?

A. Yes.

Q. Before you seized the vessel or took any further action?

A. Yes."

(c) Page 43:

"Q. You spoke of a second incident in which you said you observed two Canadian vessels fishing in Cook Inlet or in the Cook Inlet area, in Kachemak Bay area, correct?

A. I have to qualify that. I didn't actually observe them fishing. The vessels were anchored there.

A. Presumably they were halibut fishing boats and possibly they were fishing but I did not actually identify them as foreign vessels myself. They were pointed out to me as Canadian vessels."

5. *Baltzo Deposition* (From 1950 through 1959 Mr. Baltzo was Assistant Regional Director of the Fish and Wildlife Service for Alaska)

(a) Page 20:

The deposition of Charles Harold Baltzo was not introduced in evidence. Another portion of that deposition was used for purposes of cross-examination of Mr. Baltzo by way of impeachment (Tr. 185).

The foregoing quoted portions of the Larsen and Costello depositions merely reiterate the United States'

argument that Canadians were permitted to fish for halibut in Cook Inlet. As shown in Alaska's brief, the evidence proved and the Court found that such evidence was disputed and not determinative of the status of Cook Inlet as inland water (pp. 28-31, Alaska brief). In any case, the quoted testimony fails to show the existence of the right of innocent passage. In fact, the Costello testimony supports an inference that the Canadian vessel was observed in what may even be inland waters of the United States, even under the United States' theory of this case.

6. *Branson Deposition* (From 1951 through 1953 Mr. Branson was Alaska Enforcement Agent for the Cook Inlet District, Bureau of Commercial Fisheries)

(a) Page 42:

"Q. I see. All right, but now, again, this instance that you referred to in the Russian event is the only incident involving a non-Canadian halibut vessel of which you are aware, is that correct, in the area north and generally west of Shuyak Island?

A. That's the only time I recall having seen a foreign vessel fishing other than a Canadian."

The area described is not shown to be within the disputed area.

(b) Page 39:

"Q. Have the Japanese entered either Shelikof Strait or Cook Inlet?

A. I have seen Japanese ships in transit through Shelikof Strait, but never in Cook Inlet. This is Japanese fishing ships, particularly—specifically.

Q. I see. In transit, you mean from what, Bristol Bay and heading for the Gulf, something like that?

A. I have no idea where they came from or where they were going, but they were in Shelikof Strait traveling.

Q. You are not aware that they [Japanese ships] ever entered the area bounded by a line from Cape Douglas through the Barren Islands on to Cape Elizabeth?

A. I've never seen one in there.

Q. And what about vessels of any other nation?

A. North of a line between Cape Douglas and the Barren Islands, no." (pp. 39-40)

The above quoted testimony fails to show that any foreign vessels were afforded the right of innocent passage in Cook Inlet. Moreover, the testimony amply demonstrates the fact that Cook Inlet was respected by foreign nations as inland waters.

7. *O'Dale Deposition* (Mr. O'Dale from 1901 to at least 1910 operated vessels and prospected in the Cook Inlet area of Alaska)

(a) Pages 20-21:

"Q. [By Mr. Cranston] You were talking about all the waters of Cook Inlet?

A. Yes.

Q. Did you ever see any foreign fishing vessels in Cook Inlet?

A. Oh, there was other vessels, yes, coming in more all the time.

Q. Were there foreign countries, say, Canadians or Japanese?

A. There was no foreign country boats while I was working for the Fish and Game Commission.

Q. Did you ever see any foreign fishing boats when you were running your mail boat in Cook Inlet?

A. No.

Q. Or your gas boat back around 1901, or around that time?

A. No. We never had any foreign boats in there at that time. But there was a foreign boat come in. It was a freighter or a passenger boat or something which they had a license to do.

Q. Did you ever see any foreign fishing boats?

A. No."

This testimony shows that no foreign vessels were permitted in Cook Inlet, even in the earliest days except by permission, such as a license.

8. *Studdert Deposition* (Mr. Studdert was a Fish Warden in the Cook Inlet area for two years, including the year 1924, for the United States Bureau of Fisheries)

(a) Page 22:

"Q. Do you recall actually seeing any foreign vessels there?

A. Well, I think that there were some foreign shipping around through there at the time, you know, in the lower Cook Inlet.

Q. What about foreign fishing vessels?

A. Well, there could have been, and I wouldn't say that there weren't, because fish were at quite a price at that time, and, you know, there was—the fish were desirable to get, and so they poached a lot up in that area—

Q. All right, and—

A. And we were to have the job of picking them up and getting them out of there, you see.

Q. In other words, if you would have seen one, you would have gotten her out of there?

A. That's right.

Q. And why would you have gotten the vessel out of there, Mr. Studdert?

A. Well, if it was a foreign ship, why you would not only get her out, but you would seize the ship, you know, if you could."

No. 73-1888

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, PETITIONER

v.

STATE OF ALASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

ROBERT H. BORK,
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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73–1888

UNITED STATES OF AMERICA, PETITIONER

v.

STATE OF ALASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 497 F. 2d 1155.The memorandum opinion of the district court (Pet. App. B) is reported at 352 F. Supp. 815. The findings of fact and conclusions of law of the district court (Pet. App. C) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 1974 (Pet. App. D). The petition for a writ of certiorari was filed on June 17, 1974, and was granted on December 9, 1974 (A. 1208). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

If the waters of Cook Inlet in Alaska are historic inland waters under principles of international law, the State of Alaska has jurisdiction over the waters of and lands beneath the Inlet and would be free to proceed with a proposed sale of oil and gas leases covering submerged lands more than three miles from the shore of lower Cook Inlet. If these are not historic inland waters, the portions of the Inlet more than three miles from the shore are high seas and the submerged lands are part of the Outer Continental Shelf, in regard to which the United States has exclusive leasing authority.

The following questions are presented:

1. Whether, despite the absence of any explicit claim to Cook Inlet as inland waters or of any sovereign acts interfering with the navigational rights of foreign nations to innocent passage therein, there has been a sufficient and continuous exercise of sovereignty to establish historic title to Cook Inlet as inland waters.

2. Whether, despite the absence of positive approval or affirmative acquiescence by foreign nations in any exercise of sovereignty over the waters of Cook Inlet as if inland waters, non-opposition of foreign nations was sufficient to establish a claim to historic title.

3. Whether repeated disclaimers of sovereignty over Cook Inlet by the United States should have been denied their normally conclusive effect (a) where the court of appeals found that the evidence presented

"close" questions about the legal inferences to be drawn regarding whether historic title had previously ripened, or (b) because the district court found the disclaimers to be of "low reliability" after investigating the circumstances of their preparation.

4. Whether the "clearly erroneous" test governed the court of appeals' review of the district court's resolution of questions of international law and other legal issues in this case.

STATUTES INVOLVED

Sections 2, 3, 4 and 9 of the Submerged Lands Act of 1953, 67 Stat. 29, *et seq.*, 43 U.S.C. 1301, 1302, 1311, 1312, are set forth in relevant part in the petition (Pet. 3–6).

STATEMENT

Cook Inlet is a deep penetration into the Alaskan shoreline, stretching up from Shelikof Strait and the Gulf of Alaska, beyond Kalgin Island and further on to the City of Anchorage, which lies at the upper end. Between the natural headlands[1] at the Inlet's lower end, the closing line is 47 miles long. Deeper into the mainland, the Inlet narrows to a width of 24 miles, as measured by an imaginary line drawn across the Inlet at Kalgin Island.[2] More than three geographic miles seaward of the 24-mile line at Kalgin

[1] A headland generally is a point of land projecting into the sea, such as a cape.

[2] A map showing Cook Inlet and Shelikof Strait is reproduced as Appendix B to this brief. The map shows the basic boundaries of the portion of Cook Inlet whose status is in dispute.

Island and more than three geographic miles from the shores of Cook Inlet on both sides, lies the area of dispute. Within this area, which the United States considers to be high seas, Alaska offered, in March 1967, 2500 acres of submerged land for a competitive oil and gas lease sale.

On March 20, 1967, the United States brought suit in the United States District Court for the District of Alaska to quiet title and for injunctive relief, on the basis that Alaska is not entitled to lease submerged lands in areas of the high seas (A. 6–8). In response, Alaska contended that all of the waters in Cook Inlet are "historic inland waters" and that Alaska therefore had title to the submerged lands in the entire Inlet (A. 9–10). Alaska based this contention on the Submerged Lands Act of 1953, 43 U.S.C. 1301–1315.[3]

The parties compiled an extensive but essentially undisputed factual record bearing on the controlling question whether these waters of Cook Inlet are historic inland waters. The parties also generally agreed on three broad criteria to guide resolution of this issue: (1) the exercise of authority over the area by the nation claiming the right; (2) the continuity of the exercise of this authority for a considerable time; and (3) the attitude of foreign nations toward the

[3] The Act relinquished to the states the interest of the United States in lands beneath navigable waters of the United States out to a line three miles from the "inland waters" of the United States; the term "inland waters" include "historic bays" that would not otherwise qualify as juridical bays. See *United States* v. *Louisiana*, 394 U.S. 11, 23–24, and pp. 28 to 33, *infra*.

exercise of authority.[4] The parties did not agree, however, on what legal significance, if any, should be attributed to the various events that occurred throughout the history of the Inlet.

1. *The Russian period.* The earliest of these events took place in 1786, during the period of Russian exploration of and interest in the Alaska territory. Inlet (Pet. App. 25a; Def. Ex. HV, following A. fired a cannon shot at an English vessel that had entered lower Cook Inlet (Pet. App. 25a). But the English vessel apparently did not leave the area (Tr. 569) and its distance from the shore is not known.

By the early 1800's at least four Russian settlements existed on the shores of small bays within Cook Inlet (Pet. App. 25a; Def. Ex. HV, following A. 1208). In 1821, the Emperor of Russia issued an edict (a Ukase) purporting to claim sovereignty over, and to exclude foreign vessels from, the waters within 100 miles of "the whole of the northwest coast of America" from the Bering Strait down to 51° north latitude (which includes Cook Inlet), except for vessels compelled to enter those waters by heavy gales or want of provisions (A. 613–614). Both the United States and Great Britain immediately protested the Russian claim, which was unequivocally withdrawn and never enforced (A. 638–639, 667).

In order to resolve the controversy, however, the United States and Great Britain negotiated treaties with Russia (A. 614–619). In Article 4 of [illegible] Treaty of 1824 between the United States and Russia, 8

[4] See *United States* v. *Louisiana*, *supra*, 394 U.S. at 23–24, 74–75.

Stat. 302–305, Russia recognized for a period of ten years the right of the United States to freedom of navigation and fishing in all of the "interior seas, gulfs, harbors and creeks" on the Pacific Coast of North America above 54°40′ north latitude, an area that includes all of Alaska. During the negotiations of the 1824 Treaty, the Russian government admitted that its maritime jurisdiction was limited to three miles from the shore of Alaska (A. 667) and the United States consistently interpreted Article 4 of the Treaty to permit entry into all bays without regard to the location of Russian settlements.[5]

In the Treaty of Cession of 1867, 15 Stat. 539, Russia ceded to the United States "all the territory and dominion now possessed by" Russia in America and "contained within" specified geographical limits extending far into the Pacific Ocean. But the Treaty did not further delineate the extent of that territory and dominion in any way pertinent here.

2. *Seizure of the Kodiak and the Bering Fur Seal Arbitration.* Twenty-five years later, on June 6, 1892, the vessel *Kodiak* and two others (the *Lettie*

[5] *Seal Fisheries in Bering Sea*. S. Ex. Doc. No. 106, 50th Cong., 2d Sess., pp. 240–246, reprinted in part as Ex. 4 (A. 613–630). After Article 4 lapsed, the United States maintained the right to access to all parts of the coast, including bays, except for the points of actual Russian settlement, thereby disputing the Russian claim of authority to exclude fishing and navigation from all bays on whose shores there were Russian settlements (621–630). Even if the Russian claim had been accepted by the United States, it would not necessarily have barred access to all of Cook Inlet, because the claim would presumably have been limited in effect to the small bays along the coast of Cook Inlet on which the tiny settlements were actually located.

and the *Jennie*) were arrested by United States agents more than three miles from the shores of lower Cook Inlet because of alleged violations of Section 1956 of the Revised Statutes, which provided that no person could kill sea otters "within the limits of Alaska territory, or in the waters thereof."[6] All three vessels were American, but only the *Kodiak* was libelled for forfeiture pursuant to Section 1956. In response to the claimant's contention that the United States had no jurisdiction to make a seizure more than three miles from the shore, the district court "presumed" that the agents acted on orders of the government, and concluded that such orders constituted a claim of jurisdiction or dominion involving a "political" matter beyond the power of the court to question.[7] *The Kodiak,* 53 Fed. 126, 128–130 (D. Alaska). The court dismissed the libel, however, after determining that

[6] These arrests were the subject of newspaper stories in Sitka, Alaska (Pet. App. 27a; Pl. Ex. AE) but apparently received no greater public notoriety.

[7] The court based this analysis on dicta in *In re Cooper*, 143 U.S. 472, in which this Court denied an original application for a writ of prohibition to restrain enforcement of a sentence of forfeiture of a foreign vessel based on a violation of Rev. Stat. 1956 in the Bering Sea, on the ground that the claimant could have appealed. *Id.* at 504–513. In the course of the opinion the Court observed that, accepting the claimant's assertion (not confirmed by the record) that the offense and seizure occurred more than three miles from shore, it must be assumed that the officers were "acting under the orders of their government" which "were given in the assertion on the part of this government of territorial jurisdiction over * * * fifty-nine miles from the shores of Alaska * * *." *Id.* at 498–499. However, when a foreign vessel is not involved, as in *The Kodiak*, there is no basis for such an assumption that territorial sovereignty has been asserted (see p. 43, *infra*).

the facts did not show a violation. *Id.* at 130–132.[8] I
1893 federal agents boarded the American vessel
Olga and *Mary Anderson* twelve miles off Port Gra
ham in lower Cook Inlet because of suspected viola
tions of Section 1956, but no further action was take
(Pet. App. 27a–28a).

British protests concerning the United States' en
forcement of Section 1956 against British vessels mor
than three miles from the shores of the Bering Se
led to the Bering Fur Seal Arbitration. In 1895 th
Arbitration Tribunal determined that the Unite
States had not acquired from Russia, and did no
have, jurisdiction over the waters of the Bering Se
in Alaska beyond the ordinary three-mile limit (Pet
App. 26a; A. 668). The United States had claimed
that its assertion of jurisdiction beyond the three mil
limit in the Bering Sea was limited for historical rea
sons to that area and did not apply to the Pacific
Coast of Alaska.[9] While the status of Cook Inlet
therefore was not directly involved in the arbitration,
there is no evidence that Section 1956 was thereafter
enforced beyond three miles from the shores of Cook
Inlet—against American or foreign vessels.[10]

[8] It does not appear that enforcement proceedings were instituted against the other vessels (Pl. Ex. AE), the disposition of the *Kodiak* case apparently having governed the disposition of the cases involving the others.

[9] Henderson, *American Diplomatic Questions* 28–29 (1901).

[10] The court of appeals gave a broad construction to the Tribunal's decision, applying it to reverse prior forfeitures involving vessels seized beyond the three-mile limit not only in the Bering Sea (*e.g.*, *La Ninfa*, 75 Fed. 513, 516–517 (C.A. 9)) b
also in other waters off the Pacific coast of Alaska (*e.g.*, *he Alexander*, 75 Fed. 519, 520 (C.A. 9) (Gulf of Alaska)), ereby effectively interpretating Rev. Stat. 1956 as applyin only to

3. *The Alien Fishing Act of 1906, the Southwestern Alaska Fisheries Reservation, the White Act and the Tariff Commission Maps of 1930.* In 1906, Congress passed the Alien Fishing Act, 34 Stat. 263, which prohibited persons who were not United States citizens from fishing by means other than rod, spear or gaff in "the waters of Alaska under the jurisdiction of the United States."[11] At that time, the United States defined its territorial sea, and hence its jurisdiction, as limited to the waters within three miles from the shore of bays or other shoreline indentations wider than six miles, such as Cook Inlet (A. 13).[12] The legislative history of the Alien Fishing Act indicates that Congress intended the usual three-mile rule to be used in implementing the Act, and no exception for Cook Inlet was mentioned.[13] There is no evidence that the Alien Fishing Act was ever actually enforced against foreign vessels more than three miles from the shores of Cook Inlet, although the opportunity to do so arose, as we discuss below (p. 13, *infra*).

In 1922, President Harding issued an Executive Order[14] creating the Southwestern Alaska Fisheries

"the waters within three miles from the shores of Alaska." *La Ninfa*, *supra*, 75 Fed. at 517.

[11] In the same year, Congress passed another statute for the protection and regulation of the Fisheries of Alaska, 34 Stat. 478, which also concerned "the waters of Alaska over which the United States has jurisdiction."

[12] Cf. *Cunard S.S. Co.* v. *Mellon*, 262 U.S. 100, 122; *Manchester* v. *Massachusetts*, 139 U.S. 240, 258.

[13] See, *e.g.*, H. Rep. No. 2485, 59th Cong., 1st Sess. pp. 3, 7–9.

[14] Executive Order No. 3752, Nov. 22, 1922, Establishing the Southwestern Alaska Fisheries Reservation (A. 676–677).

Reservation and authorizing the Secretary of Commerce to regulate fishing in the Reservation (Pet. App. 29a). The Order applied to "all territorial waters, and lands within one-half mile of the shores thereof." The Order was accompanied by a map enclosing a specified area (including Cook Inlet) by straight lines. But, the lines were not drawn to delineate internal or territorial waters, and the region encompassed included areas of the high seas, thus indicating that the Reservation included only territorial waters that were within the area designated by the lines.

The Secretary of Commerce promulgated regulations purporting to include within the Southwestern Alaska Fisheries Reservation "all the shores and waters of Cook Inlet" (*ibid.*; see A. 687), but to that extent the regulations merely followed the description in the Executive Order without expressly asserting that all of Cook Inlet comprised inland or territorial waters. In 1924 federal fisheries agents enforcing the Executive Order boarded two vessels more than three miles from the shore of lower Cook Inlet. Both vessels, however, were American (Pet. App. 29a–30a; A. 14).

In 1924, Congress enacted the White Act, 43 Stat. 464, another measure to protect Alaskan fisheries, which authorized the Secretary of Commerce (later Interior) to reserve fishing areas in "the waters of Alaska over which the United States has jurisdiction" and made it unlawful to land salmon in the territory of Alaska caught in violation of the Secretary's regulations in "waters outside the jurisdiction of the United States * * *" (Pet. App. 30a). The Secretary's

regulations established fishing districts for management purposes and described the Cook Inlet Area as including all waters of Cook Inlet (Pet. App. 30a–31a; A. 687). In 1924, the United States did not claim jurisdiction in bays, such as Cook Inlet, having headlands further than ten miles apart (A. 13) and there is nothing to indicate that Congress intended to depart from this rule in the White Act. Moreover, neither the White Act nor the regulations thereunder purported to restrict fishing by *foreign* nationals beyond three miles from the shores of Cook Inlet, and there is no evidence of enforcement there against foreign nationals, despite the fact that the United States had the opportunity to do so (see p. 13, *infra*). As the Department of Interior explained, the regulations under the White Act (and other fisheries law in effect between 1924 ant 1959) "defined fishing districts for management purposes only and were not intended to enlarge or extend the territorial waters of Alaska in a legal or jurisdictional sense" (A. 832).

In 1930, in connection with a congressional investigation concerning the entry of fish products into the United States on alien-owned vessels,[15] the United States Tariff Commission prepared maps intended to show the extent of the territorial waters of the United States. The maps showed penetrations of the high seas into Cook Inlet and into other bays in which the United States claimed only a three mile territorial sea (Pet. App. 35a). The Commission destroyed the maps at the re-

[15] S. Res. 314, 71st Cong., 2d Sess.; 72 Cong. Rec. 12376.

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quest of the Secretary of Commerce, who thought they constituted an invitation to foreign fishery interests to invade unspecified areas that had theretofore been fished only by United States nationals (*ibid.*). Cook Inlet was not clearly identified as one of those areas (A. 894–895).

4. *Patrol and Enforcement.* During the period from 1941 to 1959, and to a lesser extent before then, federal agents patrolled lower Cook Inlet by boat and plane enforcing federal fisheries laws and regulations (Pet. App. 31a–32a, 34a–35a), as well as international obligations of the United States, dating from as early as 1911 and applying both to the territorial waters of the United States and to the high seas.[16]

[16] In 1911, the United States entered into a convention with Russia, Japan, and Great Britain, for the protection of fur seals and sea otters in the North Pacific waters, which forbade the hunting of such animals by nationals of the parties beyond the three-mile limit of territorial waters, and which obliged the United States to patrol areas frequented by the animals to enforce the Convention. 37 Stat. 1542. In the Act implementing the convention, Congress prohibited United States nationals from killing fur seals in those waters, directed the President to cause patrols to operate there, and authorized seizure of vessels suspected of violation of the Convention or the Act, whether they be "in port, or in territorial waters of the United States, or on the high seas * * *." 37 Stat. 499–5001. Pursuant to this Act, President Harding issued Executive Orders Nos. 3816 and 3988, in 1923 and 1924, respectively, directing the Bureau of Fisheries to patrol waters frequented by the animals and to search and seize any United States vessel suspected of violating the Convention, whether "in port or in territorial waters of the United States or in the high seas * * *" (A. 767–768).

In 1923, the United States and Great Britain entered into a similar Convention concerning halibut fishing on the high seas and in the territorial sea off the portion of the Pacific coast

At various times in the 1940's and 1950's Canadian vessels fished in Cook Inlet for halibut (A. 804–827). In 1952, federal agents responsible for enforcing the Alien Fishing Act of 1906 and other fisheries laws detected Canadians fishing for halibut in the area of lower Cook Inlet at issue in this case. On orders of their superiors, however, the federal agents declined to interfere or to enforce the Act because the vessel was foreign and was located beyond the three-mile limit to United States jurisdiction (A. 16, 226–228, 552–554; see A. 772–776, 802, 803).

Also in 1952, the Regional Director of the Alaska Region of the United States Fish and Wildlife Service indicated that federal laws such as the White Act "can be made to apply to our nationals whenever they are on the high seas, at least if they are sailing under our flag" (A. 772). The understanding in regard to lower Cook Inlet that federal fishing laws might be

including Cook Inlet. 43 Stat. 1841. In the Northern Pacific Halibut Act implementing the Convention, Congress made it unlawful, during the closed season, for any person to fish for halibut in the territorial waters of the United States (defined as "the waters contiguous to the western coast of the United States and * * * Alaska"), and for any United States national to do so in those waters, or in the territorial waters of Canada, or in the high seas. 43 Stat. 648–649. The Act also directed the President to maintain a patrol "in such * * * waters as to him shall seem expedient" and authorized searches of any vessels suspected of violations of the Act in the territorial waters of the United States, and of United States vessels suspected of violations on the high seas. Pursuant to the Act, President Coolidge issued Executive Orders Nos. 4098 and 4983, in 1924 and 1928, respectively, ordering the Bureau of Fisheries to patrol "the territorial waters of the United States and the high seas * * *" (A. 769–770).

enforced there against United States citizens but not against foreign nationals was made clear the following year in a memorandum of the National Director of the United States Fish and Wildlife Service, concurring in the opinion of the Solicitor of the Department of Interior, informing the Alaska Regional Director that (A. 803):

> To the best of my knowledge, Cook Inlet has not been claimed as an historic bay and, thus, it would seem unwise to take any action against foreign vessels fishing beyond the territorial waters of Alaska, *i.e.*, 3 miles. This is particularly true in view of the numerous claims and counterclaims which have been made by the United States and countries to the south regarding the extent of territorial jurisdiction. With respect to United States vessels, I am inclined to feel that we should attempt to regulate their fishing operations in Cook Inlet and similar areas. While the Alaska Commercial Fisheries Acts refer only to territorial waters, the basis of their application to citizens may be quite different from that involved in their application to foreign vessels.[17]

In the period from 1951 to 1957, federal agents seized at least one American vessel and arrested at least six Americans more than three miles from the shores of lower Cook Inlet for alleged violations of fisheries regulations (Pet. App. 33a–34a). All but two of the cases, however, were dismissed (A. 224, 366, 373, 460, 488, 530).

[17] When asked about this memorandum twenty years later, the former National Director, who was then 74, did not recall espousing the position stated in the memorandum (A. 267, 273–275). The authenticity of the memorandum is not in dispute, and, as noted above, the actions of the officials involved were consistent with the memorandum.

In 1956, and again in 1957, the federal fisheries regulations were revised, but included within "the waters of Alaska" to which they applied all of Cook Inlet as well as other areas beyond the territorial seas of the United States (Pl. Ex. 76, p. 26). (The regulations for the protection of fisheries in Alaska that had been issued by the Secretaries of Commerce and Interior from 1924 to 1956 pursuant to a variety of statutes and international agreements defined the Cook Inlet Area as including "Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore" (Pl. Ex. 25, p. 8; A. 1171, 1178), which encompasses the area of lower Cook Inlet in dispute here.)[18]

[18] As stated in the text, from 1924 to 1956, the regulations issued by the Secretaries of Commerce and Interior for the protection of the fisheries of Alaska, pursuant to a variety of statutes and international agreements, defined the Cook Inlet Area as including "Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore" (*e.g.*, A. 1171, 1178). Describing the Cook Inlet area as the only one not limited to "territorial coastal and tributary waters" during that period, the district court concluded that the regulations constituted an assertion of territorial sovereignty over all of Cook Inlet (Pet. App. 31a). That the regulations did not constitute such an assertion is clear from the fact that during that same period the regulations described other areas (*e.g.*, Yukon Kuskokwim, and Resurrection Bay (Def. Ex. IU)) so as to include the high seas portion of bays having entrance points wider than the ten miles then recognized by the United States as the limit on inland water bays (A. 13). Moreover, since 1924 the description of the Aleutian Islands Area (*e.g.*, A. 1171) included all of Unimak Pass, an international strait which the United States regards as high seas. In 1956 the reference to "territorial coastal and tributary waters" was omitted from the description of the Kodiak area, which was defined to include all waters of Sheli-

5. *The Gharrett-Scudder Map.* Later in 1957, representatives of the United States and Canada met to discuss a proposal to prohibit citizens of the two countries from fishing for salmon with nets on the high seas. When the option whether to use the same lines specified in the Department of Interior regulations was considered, the Canadian representatives asked to see a map depicting the "waters of Alaska" referred to in the applicable regulations. Interior Department employees Gharrett and Scudder prepared such a map, in which the "waters of Alaska" were enclosed by straight baselines (a method not used by the United States in describing its territorial sea for international purposes (cf. *United States* v. *California,* 381 U.S. 139, 167–169)) and included all of Cook Inlet, as well as other waters not previously claimed by the United States as being within the limits of its territorial sea (Pet. App. 35a–37a; cf. A. 13). The United States transmitted charts reflecting the Gharrett-Scudder line (Pl. Ex. GH–1 to BH–12, following A. 1208) to Canada accompanied by a disclaimer stating that they were not intended to enlarge or extend territorial waters in a legal and jurisdictional sense

kof Strait (A. 1175, 1178), which the United States regards as high seas, and from description the Bering River-Yakataga Area, which was also defined to include an area of high seas more than three miles from the Alaskan line (A. 1178). Finally, in 1957 the definition of every district was revised so that the Cook Inlet area and all other areas were described in terms of "waters of Alaska," defined in pertinent part as "those extending three miles seaward * * * from lines extending from headland to headland across *all* bays, *inlets*, *straits*, passes, sounds and entrances * * *" (Pl. Ex. 72, p. 26; emphasis supplied; see Pet. App. 35a), without regard to the international status of such waters.

(A. 294–295, 589, 834, 837, 869). There was no evidence that the Gharrett-Scudder charts were ever publicized or distributed to other countries, and the charts were not generally known to American interests (A. 348–349).

6. *Statehood and the Shelikof Strait Incident.* Pursuant to the Alaskan Statehood Act, enacted July 7, 1958, Alaska was admitted into the Union on January 3, 1959, on the basis that the state "shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska." Section 2, 72 Stat. 339, 48 U.S.C. ch. 2, note. On January 1, 1960, Alaska assumed control of the fisheries formerly within the jurisdiction of the federal government under the Alien Fishing Act and the White Act (Pet. App. 37a). In its fishing regulations, however, Alaska maintained essentially the same definitions of Alaskan waters and the Cook Inlet Area as had been set forth in the prior federal regulations (Pet. App. 37a; 5 Alaska Admin. Code 109.02 (1959); (A. 892).

In March 1962, the 1770-ton Japanese mothership, the *Banshu Maru 31,* arrived at the Kodiak fishing grounds to search for schools of herring. Accompanying the mothership were five other vessels. On April 5, 1962, the fleet sailed north of the Barren Islands and into Cook Inlet in search of herring (A. 53–55, 838–840; Pl. Ex. 116).

The next day, after leaving Cook Inlet without incident, the Japanese fleet engaged in fishing operations in the Shelikof Strait (A. 43–56; A. 840–863). Ten days later, Alaskan agents boarded some of the Japa-

nese vessels, which were then well into the Strait, more than 75 miles from the nearest portion of Cook Inlet (see App. B, *infra*); the Japanese captains were arrested and charged with violating Alaska fishing regulations applicable in the area (see Pet. App. 39a–40a; 82a; A. 859, 1163).[19] Although they had earlier entered Cook Inlet (cf. A. 1202), they were not charged with violating Alaska's regulation's pertaining to the Inlet. Contrary to the instructions of their employer and without the approval of the Japanese Government (A. 60–61; App. A, *infra,* 3A), the Japanese fishermen signed a statement assuring Alaska that they would not fish in an area including the Shelikof Strait and bounded by the Barren Islands, midway across the entrance to Cook Inlet (Pet. App. 40a; A. 1186–1188).

The Japanese government immediately protested the seizures and the assertions by Alaska that it had sovereignty over Shelikof Strait and Cook Inlet, and disassociated itself from the commitment made by the fishermen (Pet. App. 41a; App. A, *infra,* 3A). Alaska declined to prosecute, and later dismissed all charges, as Japan had requested (Pet. App. 40a–41a; A. 11–12; App. A, *infra,* 3A), and the United States has never expressly endorsed the actions of Alaska (Pet. App.

[19] At least one of the Japanese vessels was within three miles from the coast of Alaska (Pet. App. 40a).

[20] The State Department's official reply to the Japanese note of protest indicated that there was some question concerning the exact location of the vessels when they were seized, and that it could not be determined whether they were on the high seas or within the territorial jurisdiction of Alaska until the conclusion of then-pending court proceedings (A. 1155–1156).

17a, 42a).[20] The record shows no subsequent entry of Japanese vessels into Cook Inlet (Pet. App. 44a).

7. *Disclaimers by the United States.* Less than one month after the Shelikof Strait incident, the Legal Adviser for the State Department rendered an opinion in regard to the status of Cook Inlet as an historic bay, which the Solicitor of the Department of the Interior had requested.[21] After considering the elements of the historic claim asserted by the Attorney General of Alaska, the Legal Adviser concluded: "There is no basis for the assertion by Alaska of a claim to all of Cook Inlet as historic waters."[22] In further correspondence with the Department of Justice in 1969, after this lawsuit had begun, the State Department Legal Adviser reported that "[i]n its conduct of foreign relations the Department of State does not consider that Cook Inlet is an historic bay" (A. 758–760). And, in April 1971, the United States

Because of the eventual dismissal of those proceedings, the incident passed without a definitive diplomatic resolution. The district court noted the testimony of the Governor of Alaska that President Kennedy had made a passing comment, during a brief discussion of the Shelikof Strait seizures, that the Governor "did the right thing" (Pet. App. 41a; A. 217–218), but that comment did not mention Cook Inlet. As the record indicates in regard to an analogous incident, because of diplomatic and other considerations the absence of a formal repudiation of Alaska's actions cannot readily be equated with the United States' endorsement thereof (A. 878–881).

[21] The request for an opinion had been precipitated by the fact that Alaska had asserted that lower Cook Inlet was inland waters in which it had authority to make oil and gas leases (A. 755).

[22] Letter from Abram Chayes, Legal Adviser, Department of State, to Frank J. Barry, Solicitor, Department of the Interior, May 3, 1962 (A. 755–757).

published a set of maps delimiting its territorial sea and certain inland waters. These maps, which were distributed to foreign governments, indicated that the portion of Cook Inlet in dispute here was high seas (A. 326–327, 761).[23]

8. *The 1970 Arrests.* On July 6, 1970, also after this suit had begun, Alaska arrested, as they landed in Alaska, two non-Alaskan residents of the United States who had violated Alaska's regulations while fishing more than three miles from the shore in lower Cook Inlet in Alaskan boats. The fishermen were prosecuted for landing fish caught in violation of the regulations, but the cases were dismissed (Pet. App. 38a–39a; A. 165–173, 1191, 1196).

Neither the United States nor foreign nations protested any exercise of fisheries jurisdiction by Alaska over the waters of Cook Inlet more than three miles from the shore (Pet. App. 38a), but it does not appear that such jurisdiction has ever been exercised against foreign nationals.

9. *The Decisions of the District Court and the Court of Appeals.* On the basis of evidence summarized above, the district court, on December 14, 1972, concluded that, for purposes of the governing international law, the various events occurring when Russia owned the territory of Alaska, as well as the actions taken by the United States (through statutes,

[23] When the Governor of Alaska wrote to the President of the United States questioning the publication of these maps, the State Department responded that the maps were drawn consistently with United States policy, which had been carefully developed (A. 884–887).

regulations and actions of its employees) and the State of Alaska, constituted the requisite exercise of sovereignty over lower Cook Inlet, and that the various acts or omissions of foreign nations constituted acquiescence in those assertions of sovereignty (Pet. App. 14a–19a, 25a–45a). In the court's view, the "earliest clear assertion of sovereignty over the disputed waters occurred in 1906 when Congress enacted the Alien Fishing Act" (*id.* at 14a–15a); and the "clearest exercise of sovereignty occurred in the Shelikof Strait in 1962" (*id.* at 16a). The district court held, therefore, that all of the waters of Cook Inlet are historic inland waters. Without specifying when that historic title ripened, the court indicated that evidence of Canadian fishing as early as 1943 and the United States' disclaimer in 1962 could be disregarded as events that occurred after the emergence of historic title (*id.* at 19a, 45a), but the court relied upon events occurring during the 1950's, and as late as 1970, as assertions of sovereignty over lower Cook Inlet giving rise to historic title (*id.* at 16a–17a, 30a–43a). In reaching this result, the court also disregarded the disclaimers by the United States (the first of which antedated this litigation) that it did not regard the disputed area of lower Cook Inlet as within its jurisdiction, because it concluded that the extent of research underlying the disclaimers made them of "low reliability" (*id.* at 12a, 45a–47a).

On appeal, the United States did not challenge the basic factual findings made by the district court. Rather, it contended that in determining that sovereignty had been continuously exercised over Cook

Inlet and that foreign states had acquiesced in the exercise of such sovereignty, the district court had attributed improper legal significance to various events that indisputably occurred—in short, that the court had applied erroneous legal standards. In addition, the United States contended that the district court erred in failing to regard as legally conclusive the United States' disclaimers of sovereignty over Cook Inlet. Without discussing the legal issues raised by the United States, the court of appeals affirmed *per curiam* on the ground that the district court's "findings" were not "clearly erroneous" (Pet. App. 5a–6a).

On May 14, 1974, on the government's motion, the court of appeals recalled its mandate to the extent that it affects foreign fishing and navigation in the disputed area and stayed issuance of the mandate until June 13, 1974, or until final disposition of this case if a petition for a writ of certiorari were filed (Pet. App. 58a). On June 14, 1974, the court of appeals extended that stay until June 23, 1974 (A. 1207), by which date the petition has been filed.

SUMMARY OF ARGUMENT

1. Alaska's asserted right to authorize oil and gas drilling in the lands beneath lower Cook Inlet is based upon the Submerged Lands Act of 1953, 43 U.S.C. 1301, *et seq.*, pursuant to which Alaska, by virtue of the Alaska Statehood Act, has "the same rights as do existing States thereunder." 72 Stat. 343. The Submerged Lands Act confirmed to each state admitted after the formation of the Union a seaward boundary

three miles from its "coast line," defined with reference to the seaward limit of its "inland waters," and vested in the state the United States' title to the lands beneath navigable waters within the state's boundaries. 43 U.S.C. 1301(c), 1311(a), (b), 1312.

The Act does not define "inland waters," but this Court has adopted the international rules set forth in the Convention on the Territorial Sea and the Contiguous Zone. *United States* v. *California, supra,* 381 U.S. at 161–167; *United States* v. *Louisiana,* 394 U.S. 11, 16–17, 32–35. Under the Convention, the disputed portion of lower Cook Inlet (*i.e.,* that more than three miles from the shore and from an imaginary 24-mile line across the Inlet at Kalgin Island) can be regarded as inland waters only if Alaska can establish that Cook Inlet is covered by an exception for "historic" bays.

Since the Convention does not define "historic" bays, this Court has looked to the definition of "historic waters" under international law set forth in a United Nations study (*Juridical Regime of Historic Waters, Including Historic Bays*) and has held that, for purposes of the Submerged Lands Act, a state's claim of historic title to inland waters should be treated as if made by the United States and opposed by other nations. *United States* v. *Louisiana, supra,* 394 U.S. at 23–24, 74–75.

In that context, Alaska had the burden of establishing three factors recognized as elements of historic title: (1) the exercise of authority over the area in question by the United States or Alaska; (2) the con-

tinuity of that exercise for a considerable period of time; and (3) the acquiescence therein by foreign nations. Those factors must be considered against the background of the longstanding foreign policy position of the United States of opposing seaward expansions of jurisdiction by other nations.

2. The historic title established by the exercise of sovereignty is commensurate with the nature of the sovereignty asserted. A nation's exercise of sovereignty over coastal waters as over its territorial sea would not establish historic title to the waters as inland waters. There must be an exercise of sovereignty as over inland waters.

The crucial distinction between inland waters and the territorial sea is that, while in both a nation may regulate or even prohibit foreign fishing, only in inland waters may the nation interfere with or bar the right of innocent passage of foreign vessels.

There is no evidence in this case that either Russia, the United States or Alaska ever interfered with innocent passage of foreign vessels in Cook Inlet. To the contrary, the record shows that foreign vessels were permitted to transit and stop in the disputed area of lower Cook Inlet, and indeed foreign vessels fished there at various times since the early 1940's without hindrance. The failure of the United States to exercise inland water sovereignty weighs heavily against the ripening of a claim of historic title to Cook Inlet as inland waters.

The courts below improperly disregarded these events on the grounds that they were "infrequent" and

that historic title to Cook Inlet as inland waters had already ripened. That conclusion was based on various statutes, regulations and enforcement actions of the United States and Alaska concerning fishing in Cook Inlet and other waters of Alaska—many of which occurred after the date (never clearly specified) when historic title was held to have ripened. In any event, such assertions of sovereignty were consistent with treatment of the disputed portion of Cook Inlet as territorial seas, at best, or even high seas, for foreign fishing may be regulated in the territorial sea and the United States may regulate fishing by United States nationals even in the high seas. See *Skiriotes* v. *Florida*, 313 U.S. 69, 73–77. The patrolling of lower Cook Inlet on which the court relied was irrelevant for the additional reason that the United States was obligated by statutes and international agreements to patrol even the high seas off Alaska to enforce various fisheries regulations.

The court found the "clearest" exercise of sovereignty in Alaska's seizure of Japanese fishing vessels in Shelikof Strait in 1962, but that was not an assertion of sovereignty concerning Cook Inlet (the nearest portion of which was some 75 miles from the seizure) and it too occurred after the purported ripening of title to Cook Inlet as inland waters.

Since there have been no relevant acts of sovereignty over Cook Inlet as inland waters, it follows *a fortiori* that the requisite sovereignty has not been exercised continuously for a considerable period of time. Any continuity was interrupted, moreover, by

the periodic incursions of foreign vessels who fished unmolested in Cook Inlet.

3. The courts below also erred in concluding that foreign nations had acquiesced in the exercise of sovereignty over Cook Inlet as over inland waters. A necessary prerequisite for a claim of acquiescence based on the acts (or inaction) of foreign nations is that the coastal nation must have openly, notoriously, and unambiguously indicated, by act or declaration, that it was intending to exercise inland water sovereignty. In its foreign relations, the United States adheres firmly to the position that claims of sovereignty cannot be based on domestic legislation or regulations, or secret, unpublicized events, and foreign nations would not regard such matters as constituting assertions of sovereignty by the United States unless that intention were unmistakably clear. Here no such intention has been shown in regard to any of the purported acts of sovereignty as to which foreign nations are said to have acquiesced.

To the contrary, when inland water sovereignty was clearly asserted—by Alaska at the time of the Shelikof Strait seizure and by decision of the court of appeals itself—Japan and Canada, respectively, protested.

4. The courts below failed to give proper weight to the fact that the United States has repeatedly disclaimed title to Cook Inlet as inland waters. Determination of this country's boundaries is a foreign policy matter reflecting a variety of considerations in addition to what might be argued on the basis of past events, and is ordinarily not subject to judicial review. Yet the ruling of the courts below that Cook Inlet is

inland waters of Alaska is contrary to and overrides *pro tanto* the determination of the responsible members of the Executive Branch that Cook Inlet is not inland waters of the United States. This Court has indicated that such a disclaimer might not be decisive where it is "clear beyond doubt" that historic title has ripened, so that giving effect to the disclaimer would contract a state's existing territory. *United States* v. *Louisiana, supra,* 394 U.S. at 74, n. 97, 77, n. 104. However, where there is room for argument about the inferences to be drawn from the historic record—and that is the most that could be said for Alaska's claim here—the disclaimer governs.

In addition, the court also erred in looking behind the face of the disclaimers and rejecting them because of the court's assessment of the amount or quality of research underlying them. The court should only have been concerned with the fact that a disclaimer—a foreign policy determination—had been made.

ARGUMENT

The lower courts erred in holding that lower Cook Inlet is historic inland waters. The outer limits of inland waters determine the international coastline of the United States,[24] but neither this country nor any other nation may freely designate its own seaward boundaries without causing international consequences.[25] The dispute regarding whether Cook Inlet

[24] *United States* v. *California, supra,* 381 U.S. at 162.

[25] *United States* v. *California,* 332 U.S. 19, 25: "But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge

is historic inland waters, as the state contends and the lower courts held, or high seas, as the United States maintains, is thus not simply a domestic controversy. A determination of the status of lower Cook Inlet must take account of the international dimensions of the issue.

A. WHETHER ALASKA HAS HISTORIC TITLE TO LOWER COOK INLET AS INLAND WATERS MUST BE DETERMINED IN VIEW OF SETTLED PRINCIPLES OF INTERNATIONAL LAW AND THIS COUNTRY'S TRADITIONAL FOREIGN POLICY AGAINST SEAWARD TERRITORIAL EXPANSIONS

1. THE SUBMERGED LANDS ACT AND THE MEANING OF "INLAND WATERS"

International law recognizes a threefold division of the sea: (1) "inland" or "internal" waters,[26] consisting of bodies of water, such as bays, partly within the land territory of a nation, and over which it may exercise complete sovereignty, including the right to exclude foreign vessels; (2) the "territorial" or "marginal" sea, consisting of the waters within a specified distance seaward (three geographic miles for the United States) of the shore and inland waters of a nation, and over which it may exercise complete sovereignty, except that foreign vessels have the right of "innocent passage" through such waters upon observ-

detracts from it, is a question for consideration among nations as such, and not their separate governmental units."

[26] These terms are synonymous: "inland waters" is used in the Submerged Lands Act (43 U.S.C. 1301(c); see p. 30, *infra*), and "internal waters" in the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958 [1964], 15 U.S.T. 1606, 1609, T.I.A.S. No. 5639 (see p. 31, *infra*).

ance of special regulations concerning navigation, customs and the like; and (3) the "high seas." lying seaward of the territorial sea and in which a nation may not normally exercise sovereignty with regard to foreign vessels or foreign nationals (although it may as to its own nationals (*cf. Skiriotes* v. *Florida, supra,* 313 U.S. at 73–74, 76–77)). *United States* v. *Louisiana, supra,* 394 U.S. at 22–23; see generally I Shalowitz, *Shore and Sea Boundaries* 22–25 (1962). In the portion of the high seas adjacent to the territorial sea, known as the "contiguous zone," a coastal nation may exercise control for certain special purposes. See generally I Shalowitz, *supra,* at 238–241. Within that zone the United States has established exclusive fisheries jurisdiction between three and twelve miles from its coastline. 16 U.S.C. 1091, *et seq.*

Thus, as one moves landward through the respective zones, the extent of sovereignty of the coastal nation increases while the rights of other nations diminish. An assertion that particular waters are inland waters is tantamount to an assertion that foreign vessels are not free to enter. If such an assertion is upheld, it will also set the territorial boundaries of the nation.

In the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. 1301–1315, Congress relinquished[27] to the

[27] Six years earlier, in *United States* v. *California*, *supra*, 332 U.S. at 805, this Court had decided that the United States was "possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles."

states "title to and ownership of the lands beneath the navigable waters within the boundaries of the respective States." 43 U.S.C. 1311(a). The Act confirmed to each state admitted after formation of the Union a seaward boundary of three geographic miles from its "coast line." 43 U.S.C. 1312. Each state's "coast line" was defined with reference to the seaward limit of its "inland waters." 43 U.S.C. 1301(c). The Act does not define "inland waters."

Although Alaska was not admitted to the Union until January 3, 1959, and hence was not a "state" in 1953 for purposes of the Act (43 U.S.C. 1301(g)), the Alaska Statehood Act provided that the Submerged Lands Act shall be applicable to Alaska and that Alaska "shall have the same rights as do existing States thereunder." Section 6(m), 72 Stat. 343, 48 U.S.C. ch. 2, note.

In regard to the natural resources in the portions of the continental shelf lying seaward and outside the boundaries of the states, the Submerged Lands Act confirmed that these were under the jurisdiction and control of the United States. 43 U.S.C. 1302. And in the Outer Continental Shelf Lands Act,[28] Congress again declared that the United States owned all submerged land in the continental shelf seaward of the lands granted to the States.[29]

2. THE CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE AND THE MEANING OF "HISTORIC" BAYS

Since the Submerged Lands Act did not define "inland waters," the responsibility for supplying a definition fell to this Court. In performing this task, the Court adopted the international rules defining inland waters set forth in the Convention on the Territorial Sea and the Contiguous Zone, which was signed in 1958 and ratified by the United States in 1961, and entered into force in 1964.[30] *United States* v. *California, supra,* 381 U.S. at 161–167; *United States* v. *Louisiana, supra,* 394 U.S. at 16–17, 32–35. Under Article 7 of the Convention, which applies to bays,[31] a "bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast."

However, if the distance between the natural entrance points of a bay exceeds 24 miles, "a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length." Only those waters landward of the 24-mile line are inland waters.

The entrance to Cook Inlet is 47 miles wide and the 24-mile line prescribed by the Convention would be drawn further into the mainland, across the Inlet at Kalgin Island. If only the foregoing provisions of Article 7 were considered, there would thus be no doubt that the portion of Cook Inlet in dispute here,

[28] 67 Stat. 462, 43 U.S.C. 1331, *et seq.*

[29] See *United States* v. *California*, *supra*, 381 U.S. at 148.

[30] 15 U.S.T. 1606, T.I.A.S. No. 5639. The Convention was the product of many years of work by the International Law Commission established by the United Nations General Assembly in 1947 to codify international law. See I Shalowitz, *supra*, at 203–211.

[31] Article 7 is fully set out in *United States* v. *California*, *supra*, 381 U.S. at 169, n. 36.

which lies seaward of the line at Kalgin Island (see App. B, *infra*), is not inland waters. However, the concluding paragraph of Article 7 states that the "foregoing provisions shall not apply to so-called 'historic' bays * * *."

The question thus becomes whether Cook Inlet is an "historic" bay, for this Court has recognized that "inland waters" include historic bays for purposes of the Submerged Lands Act. *United States* v. *California, supra,* 381 U.S. at 172; *United States* v. *Louisiana, supra,* 394 U.S. at 23. But since the Convention itself does not define "historic" bays, the Court has looked to the comprehensive definition set forth in an extensive United Nations study entitled *Juridical Regime of Historic Waters, Including Historic Bays,* 2 Y.B. Int'l L. Comm'n, U.N. Doc. A/CN.4/143 (1962) (A. 729–754)). See *United States* v. *California, supra,* 381 U.S. at 172–175; *United States* v. *Louisiana, supra,* 394 U.S. at 23–24, 74–75.

While "there is no universal accord on the exact meaning of historic waters" (*United States* v. *Louisiana, supra,* 394 U.S. at 75), the *Juridical Regime* notes that there is general agreement on at least three factors that must be established: (1) the exercise of authority over the area by the nation claiming the right; (2) the continuity of the exercise of this authority for a considerable time; and (3) either the acquiescence or the absence of opposition of other nations. See *id.* at 23–24, n. 27, 75, n. 102. The party claiming historic title has the burden of proving these special circumstances in order to allow a departure from

the usual geographical test for inland waters, *Juridical Regime* ¶¶ 149–159, 188 (A. 749–751, 753).

3. THE EFFECT OF TRADITIONAL UNITED STATES FOREIGN POLICY AGAINST SEAWARD TERRITORIAL EXPANSIONS

Although the Convention and its recognition of "historic" bays was designed to deal with international affairs rather than domestic disputes, state exercises of dominion are "relevant to the existence of historic title." *United States* v. *Louisiana, supra,* 394 U.S. at 77. But in view of the effect on international boundaries, the Court has instructed that the only way to apply the concept of "historic" bays to domestic controversies "is to treat the claim of historic waters as if it were being made by the national sovereign and opposed by another nation." *Ibid.* This, we submit, the courts below failed to do properly.

Traditionally the United States has attempted to limit national claims in the oceans of the world.[32]

[32] See, *e.g.*, 4 *Foreign Relations of the United States, 1937,* pp. 754–756 (1954); Jessup, *The Pacific Coast Fisheries,* 33 Am. J. Int'l. L. 129, 134 (1939); Letter from Secretary of State Cordell Hull to Josiah W. Bruley, Chairman of the Senate Committee on Commerce, dated September 15, 1943 (Pl. Ex. 45); Letter from the Department of the Navy on Behalf of the Department of Defense to Emanuel Celler, Chairman, Committee on the Judiciary, House of Representatives, dated April 25, 1952 (Pl. Ex. 50); Letter from Secretary of State John Foster Dulles to Attorney General Herbert Brownell, dated June 15, 1956 (Pl. Ex. 106); 4 Whiteman, *Digest of International Law* 217–218 (1965); H. Rep. No. 2086, 89th Cong., 2d Sess., pp. 4, 14–15; President's Report to the Congress, "United States Foreign Policy for the 1970's: A New Strategy for Peace, in 6 *Weekly Compilation of Presidential Documents* 194, 226 (1970); Letter from Under Secretary of State John N. Irwin, II, to William

Over the years, this country has resisted claims to the seas whether made by attempts to enlarge the breadth of the territorial sea or by attempts to move seaward the limit of inland waters. The position of the United States that lower Cook Inlet is not inland waters is consistent with our foreign policy, for we could less readily oppose claims by other nations if we were extending our own territorial jurisdiction.

From this traditional policy of the United States, which the courts below failed even to recognize, a number of important propositions follow. The policy itself must weigh heavily against any claim by a coastal state, such as Alaska, that actions of the federal government gave rise to historic title. The exercise of national sovereignty over waters that otherwise would be high seas is against our declared foreign policy. Other nations of the world are and have been aware of our position regarding territorial expansions in the seas, and only the most clear, direct and long-standing assertions of sovereignty would alert them to a departure from our normal attitude. This is why the Court has required, as a prerequisite to establishing that waters are historic bays, the more stringent requirement that foreign nations actually acquiesce in the exercise of jurisdiction rather than merely fail to oppose it.[33] Moreover, in light of our traditional

A. Egan, Governor of Alaska, dated December 22, 1971 (A. 884–887).

[33] In *United States* v. *Louisiana*, *supra*, 394 U.S. at 24, n. 27, the Court, although noting the split in viewpoints regarding whether mere absence of opposition or actual acquiescence was necessary, reiterated the position stated in *United States* v. *California*, *supra*, 381 U.S. at 172, that there must be "acquiescence."

policy and the instruction that a claim, such as Alaska's, must be viewed as if it were asserted by the United States and opposed by foreign nations (see p. 33, *supra*), disclaimers of jurisdiction by the United States must be considered conclusive in the absence of evidence "clear beyond doubt" that historic title has already ripened (see pp. 54–55, *infra*) even when made during the pendency of a lawsuit between a state and the United States over historic title.[34] In addition, for these reasons, as well as others we discuss below, neither the internal governmental regulations of the United States and the states nor actions pursuant to them against American citizens can be relied upon as exercises of sovereignty. Only actual enforcement actions directed against foreign citizens or foreign governments can be considered in this regard.

With this in mind, we next discuss the matters relied upon by the courts below to support their conclusion that lower Cook Inlet is part of an "historic" bay. We emphasize again that the dispute here is not over the evidence itself but its relevance and significance to the inquiry at hand.[35]

[34] The disclaimers given effect in *United States* v. *California*, *supra*, 381 U.S. at 163, 175, consisted of the position asserted by the United States in briefs filed in this Court in that litigation.

[35] Accordingly, this is not a case in which the Court must follow the rule barring review of "concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275. We accept the findings of fact of the district court; we do not accept the court's conclusions regarding the relevance and importance of those facts.

569-659—75——4

B. THERE HAS BEEN NO RELEVANT EXERCISE OF SOVEREIGNTY OVER THE WATERS OF LOWER COOK INLET TREATING THAT AREA AS INLAND WATERS

1. ALASKA'S CLAIM THAT COOK INLET IS HISTORIC INLAND WATERS CAN BE SUPPORTED ONLY BY ASSERTIONS OF SOVEREIGNTY AS OVER INLAND WATERS

The first factor to be considered in determining whether certain waters are an historic bay is the exercise of authority over the area by the claiming nation. See p. 32, *supra*. But in order for lower Cook Inlet to be considered part of an historic bay, and hence inland waters, more is required than merely the exercise of some sovereignty over the area. Careful attention must be paid to the *scope* of the sovereignty asserted since even if some historic title ripened, it may not be to inland waters. As this Court stated in *United States* v. *Louisiana*, *supra*, 394 U.S. at 24, n. 28, "Historic title can be obtained over territorial as well as inland waters, depending on the kind of jurisdiction exercised over the area." Immediately after the cited passage, the Court quoted the following statement from the *Judicial Regime* ¶ 164 (A. 751): "If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea."

Of course, if the Court decides that no historic title of any kind ripened in regard to lower Cook Inlet, which is what we contend, then the only portion of the Inlet that would comprise territorial sea would be the area three geographic miles from the shores of the

Inlet (and the closing lines of rivers and small bays opening into the Inlet) and from the 24-mile line at Kalgin Island.[36] But perhaps it is unnecessary to go so far. For the most that can be said for the events relied upon by Alaska is that, although they might at best establish a claim to lower Cook Inlet as an historic territorial sea,[37] they do not establish that the area is historic inland waters.[38]

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[36] See Submerged Lands Act, 43 U.S.C. 1312, allowing each state to extend its seaward boundary three miles from its "coast line," which is defined as the low water part of the coast in contact with the sea and the line marking the seaward limits of inland waters. 43 U.S.C. 1301(c).

[37] Alaska argues that the concept of historic territorial sea as applied to bays "is surely a figment of imagination" (Br. in Opp. 7). However, the Gulf of Fonseca in Central America is an example of an historic territorial sea within a bay-shaped area. See *Historic Bays. Memorandum by the Secretariat of the United Nations*, U.N. Doc. No. A/Conf. 13/1, ¶ 132-133 (1957) (A. 717). Further, this Court has recognized the concept and settled principles of international do so as well (see p. 36, *supra*). The passage from the *Juridical Regime* which the Court quoted makes this plain when it and the next paragraph of the United Nation's study are set out in full (A. 751):

> 164. On the other hand, it should be recalled that the right to "historic bays" is based on the effective exercise of sovereignty over the area claimed, together with the general toleration of foreign States. The sovereignty exercised can be either sovereignty as over internal waters or sovereignty as over the territorial sea. In principle, the scope of the historic title emerging from the continued exercise of sovereignty should not be wider in scope than the scope of the sovereignty actually exercised. If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea. For instance if the claimant State allowed the innocent passage of foreign ships through the waters

Under international law, there is a critical distinction between inland waters and territorial seas. In inland waters, but not the territorial sea, the coastal nation may interfere with or bar "innocent passage" of foreign vessels (see pp. 28–29, *supra*). Innocent passage is navigation through waters to traverse them, including passage *en route* between the high seas and inland waters, so long as it is not prejudicial to the peace, good order or security of the coastal state. Such passage includes stopping and anchoring incidental to ordinary navigation or rendered necessary by *force majeure* or by distress. See Convention on the Territorial Sea and the Contiguous Zone, *supra*, 15 U.S.T. at 1610.

On the other hand, while "freedom of fishing" is a recognized right of foreign nations in the high seas,[39] in its territorial sea a coastal nation may properly regulate fishing and other activities by foreign na-

claimed, it could not acquire an historic title to these waters as internal waters, only as territorial sea.

165. The seeming contradiction between the statement that "historic bays" are internal waters, and the conclusion that waters claimed on the basis of the exercise of sovereignty as over the territorial sea cannot be internal waters but only part of the territorial sea, is really one of terminology. In the latter case, it would be preferable not to speak of an "historic bay" but of "historic waters" of some other kind.

[38] If the evidence does not establish Cook Inlet as an historic bay, it is unnecessary for the Court to consider whether it establishes lower Cook Inlet as historic territorial sea, in which case Alaska would have no jurisdiction over it. See p. 30, *supra*.

[39] See, *e.g.*, Convention on the High Seas, April 29, 1958 [1962], 13 U.S.T. 2312, T.I.A.S. No. 5200. See generally I Shalowitz, *supra*, at 255–256, 259–264.

tionals.[40] See, *e.g.*, *Manchester* v. *Massachusetts*, 139 U.S. 240, 257. Indeed, the Convention on the Territorial Sea provides that passage of foreign fishing vessels is not innocent if they do not observe laws and regulations made and published by the coastal state "in order to prevent these vessels from fishing in the territorial sea." 15 U.S.T. at 1610.

Therefore, the nation's attempt to regulate navigation or fishing by foreign nationals is not necessarily evidence that it is treating the waters as inland waters in the absence of any declaration that it intends to do so. All that can be said with assurance is that it may have regarded the waters as part of its territorial sea. The *Louisiana Boundary Case* illustrates this well. The United States' enforcement of navigation rules against foreign vessels in the disputed coastal waters was "an accepted regulation of the territorial sea itself" and the Court therefore held that such enforcement "could not constitute a claim to inland waters," particularly since the rules were not intended as an assertion of such an international jurisdiction claim. 394 U.S. at 24–25, 27.

In sum, absent an explicit declaration, historic title to inland waters can be established only by evidence that the coastal nation has excluded foreign vessels from the waters in dispute, intending thereby to assert sovereignty over those waters as inland waters.

[40] In addition, a coastal nation may exercise jurisdiction over foreign fishing in the "contiguous zone" beyond its territorial sea (see p. 29, *supra*).

2. THERE HAS BEEN NO EXERCISE OF SOVEREIGNTY OVER COOK INLET AS OVER INLAND WATERS

Measured against the applicable principles, none of the events relied upon by Alaska and the lower courts constituted a relevant exercise of sovereignty over lower Cook Inlet as inland waters.

We can readily dispose of the two Russian actions, which took place prior to the purchase of Alaska by the United States in 1867. The Russian fur trader's cannon shot at a passing English vessel entering Cook Inlet in 1786 (Pet. App. 25a–26a) is meaningless. Only the acts of government, as distinguished from the unauthorized acts of private citizens, can establish sovereignty.[41] In any event, the three-mile limit to the territorial sea, which originated in the eighteenth century, was based on the range of a cannon shot from the shore. I Shalowitz, *supra*, at 25. The English vessel therefore was presumably not more than three miles from the shores of Cook Inlet and the most that can possibly be said about the incident is that it constituted an exercise of authority over the territorial waters within Cook Inlet, not over all of Cook Inlet as inland waters.

As to the Ukase issued by the Russian emperor in 1821, which declared Russian sovereignty over all waters within 100 miles from the entire coast of Alaska, Russia never enforced it and it was effectively abandoned after the United States and Great Britain protested the edict (pp. 5–6, *supra*).[42] As this Court held in *United States* v. *California*, *supra*, 381 U.S. at 174, a mere "declaration of jurisdiction without evidence of further active and continuous assertion of dominion over the waters is not sufficient to establish the claim" to historic title.

Aside from the foregoing,[43] nearly all of the events relied upon by Alaska and the courts below, including the seizure of Japanese vessels in the Shelikof Strait in 1962, involved the regulation of fishing. Thus, in its opinion the district court pointed to the enactment of the Alien Fishing Act of 1906, which prohibited fishing by aliens in the waters of Alaska under United States jurisdiction; the Executive Order in 1922 creating the Southwestern Alaska Fisheries Reservation and the regulations thereunder that applied to all of the waters of Cook Inlet; the White Act of 1924, which applied to the same area; and the promulgation of state fishing regulations, effective January 1, 1960, which applied to all of Cook Inlet (Pet. App. 14a–16a). In regard to all these measures, the district court noted that lower Cook Inlet was regu-

[41] See *United States* v. *Louisiana*, *supra*, 394 U.S. at 76, n. 103 citing the *Juridical Regime* ¶ 95 (A. 742–743). The district court did not find that the Russian fur trader was a government agent or was acting under government direction (cf. Pet. App. 25a–26a).

[42] Even the Ukase did not unequivocally assert sovereignty as over inland waters: it did not bar innocent passage entirely since it permitted passage by reason of *force majeure*, which is one of the elements of innocent passage (see p. 38, *supra*).

[43] The district court, in its findings of fact but not in its opinion, also noted the 1892 arrest of the *Kodiak* and the 1893 boarding of the *Olga* and *Mary Anderson* in lower Cook Inlet, but all of the vessels were American and, as we discuss at pp. 49–51, *infra*, enforcement actions against United States citizens cannot be relied upon to establish title to historic inland waters.

larly patrolled by the relevant enforcement authorities, that witnesses who conducted the patrols said they would have taken action against fishing by foreign vessels if they had encountered it; and that "numerous acts of enforcement of fishing regulations occurred" in lower Cook Inlet between 1924 and 1959 (*id.* at 15a–16a)."

But as the statement of facts indicates (pp. 9–10, *supra*), there is nothing to show that the Alien Fishing Act of 1906 or the White Act of 1924, which applied to Alaskan waters under United States jurisdiction, constituted an assertion of sovereignty over lower Cook Inlet: at the time these measures were passed, the United States considered its territorial sea (and hence its jurisdiction) as limited to three miles from the shores of bays with entrances wider than six miles (1906) or ten miles (1924) (see A. 13) and no exception, express or otherwise, was made by these Acts in regard to Cook Inlet.[45] As to the Southwestern Alaska Fisheries Reservation established in 1922, the area within the Reservation included portions of the high seas since the lines drawn on the accompanying maps were not intended to delineate territorial or inland waters (see pp. 9–10, *supra*). Our view of the

[44] In most instances, however, the enforcement actions were ultimately dismissed for one reason or another, so that sanctions were actually imposed only in perhaps two cases, both involving Americans (see p. 14, *supra*). The Shelikof Strait prosecutions also were ultimately dismissed (see p. 18, *supra*). Yet this Court has said that proceedings resulting in dismissals are of limited value as evidence of assertions of authority. See *United States* v. *California*, *supra*, 381 U.S. at 174.

[45] See, *e.g.*, H. Rep. No. 2485, 59th Cong., 1st Sess., pp. 3, 7–9.

limited office of these fisheries regulations is confirmed by the acts and assertions of those responsible for enforcing them when foreign vessels were actually found fishing in Cook Inlet: these officials did not understand the regulations to bar foreign fishing more than three miles from the shore of Cook Inlet (see pp. 13–14, *supra*).

Moreover, the fact that the United States and Alaska patrolled the waters of lower Cook Inlet beyond the three-mile limit in enforcing fisheries laws is in itself of no legal significance in this case. The regulation of fishing is a power a coastal nation may exercise in the territorial sea and beyond. Any nation may patrol even the high seas to enforce its own laws against those who are subject to them. As the Court held in *Skiriotes* v. *Florida*, *supra*, 313 U.S. at 77, "the United States may control the conduct of its citizens upon the high seas."[46] International consequences can arise only when the patrol activity results in enforcement actions directed against foreign nationals. But then it is the enforcement itself, not the fact that the waters were patrolled, that constitutes the relevant exercise of sovereignty.

If there is one salient fact in this case it is this: neither the United States nor Alaska has ever taken any enforcement action against a foreign vessel or foreign national in lower Cook Inlet. The district court relied upon the testimony of witnesses who speculated about what they would have done if for-

[46] In *Skiriotes*, the Court upheld a Florida statute regulating the taking of commercial sponges by citizens of the state from waters beyond the three-mile territorial limit.

eign vessels had fished in lower Cook Inlet (Pet. App. 15a). But this is hardly significant. The acts of sovereignty necessary to give rise to historic title must be public; they "must have the notoriety which is normal for acts of State. Secret acts could not form the basis of a historic title; the other State must have at least the opportunity of knowing what is going on." *Juridical Regime* ¶ 96 (A. 743). The unannounced intentions of a number of persons who patrolled Cook Inlet thus cannot be used as a basis for establishing historic title.

Of course, there could be a situation in which a nation's claim of historic title was so unambiguous, so well known internationally and so widely respected that no enforcement action was ever taken because none was necessary—foreign vessels simply avoided any penetration of the historic inland waters. But that is not the situation in regard to Cook Inlet. In 1962, before the Shelikof Strait incident, the Japanese fishing fleet sailed into lower Cook Inlet in search of fish. Prior to 1959, when Alaska became a state, federal fisheries agents saw foreign vessels navigating or at anchor in lower Cook Inlet but did not interfere with them (A. 16–17, 21, 262, 360–361, 456, 507–508, 545, 602), which reflects an understanding that such innocent passage was not subject to United States interference (cf. A. 772–776, 802–803, 1027)—an understanding perhaps consistent with a claim of historic territorial sea but inconsistent with Alaska's claim of historic inland waters. And, as the district court ac-

knowledged, Canadian vessels fished lower Cook Inlet during the 1940's and 1950's without incident.[47]

As against this, the district court relied upon a number of acts of enforcement against United States citizens fishing in lower Cook Inlet (Pet. App. 26a–34a). But as indicated above, these acts are not sufficient assertions of sovereignty to give rise to the international claim of historic title over inland waters. A nation may regulate the fishing activities of its citizens even on the high seas and, when it does so, it is not simultaneously asserting international jurisdic-

[47] In disregarding this evidence, the district court observed that the intrusions of Canadian halibut vessels inside Cook Inlet were infrequent (Pet. App. 44a–45a). But, if Canadians only infrequently desired to fish lower Cook Inlet, yet did so at will and without United States interference, this effectively repudiates a claim of historic title. As the *Juridical Regime* states ¶ 99 (A. 743) (emphasis supplied):

> It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. *It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken.*

Moreover, given the remote location of Cook Inlet, the relative infrequency of the known foreign fishing there is less significant than it would if the Inlet were located closer to a greater number of nations. Cf. *Juridical Regime* ¶ 117 (A. 745–746); Bouchez, *The Regime of Bays in International Law* 255 (1964). As it is, fishing vessels of two of the closest nations—Canada and Japan—have entered Cook Inlet (see pp. 13, 17, *supra*). Moreover, the unmolested voyages of Canadian vessels in Cook Inlet were not qualitatively more "infrequent and isolated" (Pet. App. 45a) than the purported exercises of sovereignty there beyond the three-mile limit (see pp. 10, 14, 20, *supra*).

tion over the area. See *Skiriotes* v. *Florida, supra.*[48] Only enforcement actions directed at foreign nationals can have international significance and only such actions can constitute the required exercise of sovereignty.[49] As the court stated in *Civil Aeronautics Board* v. *Island Airlines, Inc.*, 235 F. Supp. 990, 1004–1005 (D. Haw.), affirmed, 352 F. 2d 735, 741 (C.A. 9), sovereignty must be exercised by deeds such as "keeping foreign ships or foreign fishermen away from the area, or taking action against them" and "the *acts* must have notoriety which is normal for acts of the state."[50]

While Alaska's seizure of the Japanese vessels in the Shelikof Strait in 1962—which the district court thought to be "the clearest exercise of sovereignty" (Pet. App. 16a)—was indisputably an act of sovereignty directed at foreign nationals, the seizure

[48] As we discuss below, such acts directed against the nation's own citizens do not have the required international notoriety to constitute assertions of jurisdiction as over territorial or inland waters. See pp. 49–51, *infra*.

[49] Indeed, we believe this follows from the Court's instruction that the only way to apply the doctrines of historic bays in dispute between a state and the United States "is to treat the claim of historic waters as if it were being made by the national sovereign and opposed by another nation." *United States* v. *Louisiana*, *supra*, 394 U.S. at 77.

[50] Thus, we believe that the district court erred in relying upon: the attempted enforcement of Rev. Stat. 1956 against the *Kodiak* and other vessels in the 1890's; the Southwestern Alaska Fisheries Reservation and the White Act; enforcement of those fisheries restrictions through regulations and patrol, as well as arrests of Americans and seizures of American vessels in 1924 and the 1950's by the United States, and in the 1970's by Alaska; and the Gharrett-Scudder line (see pp. 6–20, *supra*).

occurred more than 75 miles from the Cook Inlet (see p. 18, *supra*). It therefore cannot be relied upon as an assertion of jurisdiction over the area in dispute here. And, as we discuss below (see p. 52, *infra*), Japan certainly did not acquiesce in Alaska's attempt to use this incident for the purpose of asserting jurisdiction over lower Cook Inlet.

In short, neither Alaska nor the United States has ever interfered with the innocent passage of a foreign vessel in lower Cook Inlet and yet only such interference would manifest to the international community that sovereignty was being asserted over lower Cook Inlet in a manner consistent with its treatment as historic inland waters.[51] No enforcement action of any kind under any of the numerous fishing regulations has ever been taken against a foreign vessel in lower Cook Inlet. There has been no express declaration by the United States that it regarded lower Cook Inlet as an historic bay. Any inferences that might be drawn to show the requisite exercise of sovereignty are so attenuated that other nations of the world could not have acquiesced in a historic claim. We now turn to that additional requirement for establishing the existence of an historic bay.

C. FOREIGN NATIONS HAVE NOT ACQUIESCED IN ASSERTIONS OF SOVEREIGNTY OVER COOK INLET AS INLAND WATERS.

As we discussed above (pp. 32–33, *supra*), the proponent of a claim of historic title to coastal waters as inland waters must establish that "the attitude of foreign

[51] As distinguished from historic territorial waters.

nations" toward the coastal state's assertion of sovereignty has been actual "acquiescence," rather than the mere absence of opposition. *United States* v. *California, supra,* 381 U.S. at 172; *United States* v. *Louisiana, supra,* 394 U.S. at 23.[52] Nations can manifest their acquiescence or nonacquiescence in another nation's assertion of sovereignty by deed as well as word. *Juridical Regime* ¶¶ 113–115 (A. 745); Bouchez, *supra,* at 271–273. In order for their action (or inaction) to be regarded as manifesting acquiescence, however, it must be reasonably clear to other nations that the coastal nation is attempting to assert sovereignty over the waters in question—in this case, as if they were inland waters. In this respect, the requirement that there be an exercise of sovereignty, discussed in the preceding section, is interrelated with the need for acquiescence by foreign nations.

Accordingly, to serve as a basis for a claim of historic title, a declaration or assertion of sovereignty must be open and notorious, clearly providing an occasion for protest or acquiescence. *Juridical Regime* ¶¶ 96, 125–130 (A. 743, 746–747); Bouchez, *supra,* at 262–264, 273–276, 278.[53] Yet here Alaska and the lower

[52] The district court properly chose to apply, at least superficially, the more stringent test, *i.e.*, actual acquiescence (Pet. App. 17a–18a), but its application of that test was fatally tainted by its reliance upon supposed acts of sovereignty that, as we have argued above, were legally ineffective for international law purposes (see pp. 36–47, *supra*).

[53] The *Juridical Regime* asserts that acts of sovereignty must have meaningful "notoriety", *i.e.*, "the notoriety which is normal for acts of state." ¶¶ 96, 125–130 (A. 743, 746–747).

courts relied upon acts that were totally unpublicized (*e.g.*, boardings of American vessels in 1924, the destruction of the Tariff Commission maps in 1930, and transmission of the Gharrett-Scudder line to Canada in 1957) as well as domestic statutes, executive orders and regulations and enforcement actions against Americans of which foreign nations might learn only fortuitously.

The district court's reliance upon these internal exercises of authority not only is contrary to the principle of international law just cited, but also contradicts the position taken by the United States in resisting historic territorial claims of other nations. In 1957, when the Soviet Union issued a decree declaring the waters of Peter the Great Bay to be historic inland waters, the United States sent a note of protest warning against encroachments on the high seas and stating that a claim of historic title could not be based on "internal regulations of the Russian Government, which were not communicated to the Governments of other States."[54] As the Secretary of State observed in his letter to the Spanish Minister in 1863, regarding Spain's claim to maritime jurisdiction around Cuba: "Nations do not equally study each other's statute books and are not chargeable with notice of national pretentions resting upon foreign legislation."[55] Since

[54] 4 Whiteman, *Digest of International Law* 256 (1965). Russia had claimed that the "historic rights of Russia to the Bay of Peter the Great were confirmed in Rules of Maritime Fisheries In The Territorial Waters of the Governor-Generalship of Priamurye published by the Russian Government in 1901 * * *." *Id.* at 255.

[55] 1 Moore, *International Law Digest* 709, 710 (1906).

this case must be treated as if it were between the United States and an opposing nation (*United States* v. *Louisiana, supra,* 394 U.S. at 77), the district court erred in relying upon the internal statutes and regulations of the United States to establish historic title to lower Cook Inlet. Those regulatory measures would have been significant only if enforcement actions pursuant to them were taken against foreign nationals. *Juridical Regime* ¶¶ 89–90 (A. 742). No such actions occurred at any time.

In addition to being open and notorious, a coastal nation's declaration or assertion of sovereignty must be sufficiently clear and unambiguous to provide other nations with an occasion for protest or acquiescence. The other nations "must have at least the opportunity of knowing what is going on." *Id.* at ¶ 96 (A. 743). Thus, actions that could reasonably be regarded as merely as assertions of jurisdiction over the citizens of the coastal nation or others coming within its territorial waters are not adequate to provide a basis for acquiesence by foreign nations in an assertion of sovereignty as over inland waters.

Clarity is particularly necessary in regard to claims of historic title by the United States in light of this country's traditional foreign policy against seaward expansions of territorial jurisdiction (see pp. 33–35, *supra*). Aside from the Shelikof Strait incident, which we discuss below, there has been no such clear and unambiguous assertion of sovereignty. The various statutes and regulations upon which the courts below relied, are far from clear. Many inferences must

be drawn and elaborate arguments made in order even to reach the conclusion—which we believe erroneous—that sovereignty was in fact asserted over lower Cook Inlet. Yet a "definiteness which requires so much subtlety to expound is hardly definite."[56] Still less does it manifest to the international community a claim that lower Cook Inlet is part of an historic bay.

Thus, for reasons we have previously discussed (see pp. 41–42, *supra*), the Alien Fishing Act did not reflect an unequivocal intention to assert sovereignty over all of lower Cook Inlet as inland waters. The Gharrett-Scudder line involved foreign nationals to some degree, but the United States explicitly stated that this was not intended to delineate jurisdiction for international purposes (see pp. 16–17, *supra*). Similarly, acts of patrol more than three miles from the shore in lower Cook Inlet scarcely could be regarded by other nations as assertions of territorial sovereignty. The United States has domestic and international obligations that require it to engage in such patrol—even in the high seas—in order to enforce conservation measures against nationals of the United States and of other parties to such international agreements.[57]

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[56] *Screws* v. *United States*, 325 U.S. 91, 153 (dissenting opinion).

[57] The United States has many agreements with Canada and other nations concerning fisheries and other matters for which lines have been drawn beyond the usual three-mile limit. *E.g.*, International Convention for the High Seas Fisheries of the North Pacific Ocean, May 9, 1952, 4 U.S.T. 380, 382, T.I.A.S. No. 2786; Interim Convention on Conservation of North Pacific

When Alaska did make a declaration of inland water sovereignty over lower Cook Inlet at the time of the Shelikof Strait seizures in 1962, Japan immediately protested. Thus the first and only clear assertion of sovereignty was met with an equally clear statement of nonacquiescence.

The nonacquiescence of foreign nationals[58] is confirmed by the reaction of the Canadian government to the decision of the court of appeals in this case. Canadian vessels have fished in Cook Inlet for decades without interruption (see p. 13, *supra*). Had the United States not sought the stay granted by the court of appeals, Canada was prepared to decline to renew a mutually important agreement with the United States on reciprocal fishing privileges,[59] in protest

Fur Seals, February 9, 1957, 8 U.S.T. 2283, T.I.A.S. No. 3948. In its foreign relations, the United States does not claim that such lines constitute internationally significant territorial claims.

Patrol activities would not have constituted an international claim of sovereignty for the additional reason that the White Act and other laws (see, *e.g.*, p. 10, *supra*) prohibit importing fish or animals taken on the high seas under certain circumstances—domestic legislation for which patrol of the high seas is a necessary and proper means of enforcement, against both citizens and foreign nationals (cf. A. 1027).

[58] Cook Inlet is not among the historic waters identified in various comprehensive studies of the subject. See, *e.g.*, *Historic Bays, Memorandum by the Secretariat of the United Nations*, *supra*, at ¶¶ 12–43 (A. 693–698); Bouchez, *supra*, at 27–101; Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* 383–439 (1927).

[59] See Agreement Between United States and Canada on Reciprocal Fishing Privileges, June 15, 1973, 24 U.S.T. 1729, T.I.A.S. No. 7676, which authorizes specified fishing by nationals of the respective parties in designated portions of the exclusive fishing zones established by the other party.

against any suggestion that Canadian vessels are not free to fish in lower Cook Inlet (Pet. App. 73a–81a). Only after the United States agreed to seek a stay did Canada renew the agreement (May 8, 1974, T.I.A.S. No. 7818).[60]

D. THE LOWER COURTS FAILED TO GIVE PROPER EFFECT TO THE UNITED STATES' DISCLAIMERS OF HISTORIC TITLE TO LOWER COOK INLET AS INLAND WATERS

In disputes between a state and the United States involving the Submerged Lands Act, it must be determined whether the United States has asserted, in regard to its foreign relations position, a limited claim of jurisdiction over the area in question that is inconsistent with the state's claim of historic title. *United States* v. *California*, *supra*, 381 U.S. at 175; *United States* v. *Louisiana*, *supra*, 394 U.S. at 76–77. Obviously, resolution of an international controversy over particular waters determines this country's territorial boundaries but the controversy would be unlikely to arise if the United States had disclaimed his-

[60] Another "essential" requirement for establishing historic title to inland waters is that the coastal nation's exercise of authority be "continuous" for a "considerable time." *Juridical Regime* ¶ 103 (A. 743). In our view, of course, the issue of continuity need not be reached because the other two requirements—exercise of sovereignty and acquiescence by foreign nations—have not been met. It is significant, however, that federal fishing agents observed foreign vessels navigating or at anchor in lower Cook Inlet and yet took no action and that Canadian fishing occurred in Cook Inlet in the 1940's and 1950's (p. 13, *supra*), which indicates that even if there was some assertion of sovereignty as over inland waters, it was not continuous.

toric title.[61] The disclaimer, which reflects foreign policy, therefore must be taken into account in internal disputes involving the Submerged Lands Act, particularly since reference to the Convention on the Territorial Sea and the Contiguous Zone for the purpose of defining "inland waters" has the effect of establishing "a single coastline for both the administration of the Submerged Lands Act and the conduct of our *future* international relations * * *." *United States* v. *California, supra,* 381 U.S. at 165 (emphasis supplied).

Such disclaimers may take many forms: formal legislative or executive declarations; statements by State Department officials with appropriate responsibilities; assertions of limited jurisdictional claims in litigation; and conduct by the United States concerning the waters in dispute, or acquiescence in the conduct of other nations, that is inconsistent with the jurisdictional claim of the state. Whatever the form, this Court has held that disclaimers of jurisdiction by the United States—even those asserted only in the litigation—are conclusive if the evidence of historic title is "questionable." *United States* v. *California, supra,* 381 U.S. at 175 (disclaimer consisted of position asserted by United States in this Court).

However, a disclaimer by the United States will not be conclusive if its effect would be to force "contraction of a State's recognized territory," because

[61] If, after disclaiming sovereignty, the United States later asserted that historic title had ripened, the disclaimer would be telling—if not conclusive—evidence against the assertion.

the United States cannot abandon its consistent, official international stance "solely to gain advantage in a lawsuit to the detriment of [the state] * * *." *United States* v. *Louisiana, supra,* 394 U.S. at 74, n. 97 (quoting *United States* v. *California, supra,* 381 U.S. at 168). Accordingly, a disclaimer will not necessarily "prevent recognition of a historic title which may already have ripened because of past events" if "'the historic evidence was clear beyond doubt.'" *United States* v. *Louisiana, supra,* 394 U.S. at 77, n. 104 (quoting *United States* v. *California, supra,* 381 U.S. at 175).[62]

Here the United States has repeatedly disclaimed historic title to lower Cook Inlet as inland waters, not only through the position asserted in this litigation, but on other occasions. At the time of the Shelikof Strait incident in 1962, the Legal Adviser of the State Department wrote that "[t]here is no basis for the assertion by Alaska of a claim to all of Cook Inlet as historic waters" (A. 757). In 1969, the Legal Adviser reiterated that "[i]n its conduct of foreign relations the Department of State does not consider that Cook Inlet is an historic bay" (A. 760). In 1970, the Secretary of State wrote that the United States Department of State knew no basis for claims of historic title to any area like Cook Inlet that would not qualify as a juridical bay (A. 829). In all instances the

[62] See also the recent Special Master's Reports in *United States* v. *Louisiana*, No. 9, Original, pp. 16–19 (July 31, 1974); *United States* v. *Florida*, No. 52, Original, pp. 41–46 (January 18, 1974).

position taken concerning Cook Inlet was consistent with that asserted internationally.

Finally, in 1971 the United States published a set of maps delineating all its claims to territorial sea, the contiguous zone, and certain inland waters of the United States, in which the high seas are shown as penetrating into the portions of lower Cook Inlet claimed here by Alaska (see A. 761). Prepared by the government's Committee on Demarcation of United States Boundaries (a committee of the Interagency Law of the Sea Task Force), these charts reflect an official determination of what the United States regards as its coastline and the waters subject to its jurisdiction; as such they have been distributed to foreign governments and are available to the general public (A. 326–327).[63] (Other charts in this series have been treated as authoritative disclaimers of sovereignty by the Special Masters in *United States* v. *Florida*, No. 52, Original, *supra*, at 42, and *United States* v. *Louisiana*, No. 9, Original *supra*, at 17.)

The district court disregarded the disclaimers[64]

[63] In response to Alaska's comments about the accuracy of the delineation of the Alaskan coastline, the Acting Secretary of State wrote in 1971 that the lines were "[d]rawn in a manner consistent with the provisions of the Convention on the Territorial Sea and the Contiguous Zone and longstanding U.S. policies concerning the interpretation of the Convention" (A. 884–887).

[64] The district court took no account of the position asserted by the United States in this litigation, concluding that the allegations of the complaint "are not effective disclaimers" (Pet. App. 47a). That ruling, however, is contrary to this Court's treatment of litigation positions in other cases as being sufficient disclaimers. See, *e.g.*, *United States* v. *California*,

on the ground, *inter alia*, that it was "clear beyond doubt" that historic title had already ripened prior to the first disclaimer in 1962 (Pet. App. 13a, 45a, 51a–52a).[65] However, as we have argued above, the evidence of historic title relied upon by the district court was legally insufficient. While we therefore believe that Cook Inlet is not an historic bay, short of this it is at least certain that the ripening of historic title was far from "clear beyond doubt."[66] Indeed, the court of appeals itself observed "that the question of determining the ultimate inferences to be drawn [from the evidence] was close" (*id.* at 5a).

In a case such as this, "with its questionable evidence of continuous and exclusive assertions of dominion over the disputed waters, we think the disclaimer decisive." *United States* v. *California*, *supra*, 381 U.S. at 175.

The district court, however, gave an additional reason for refusing to credit the disclaimers: the court

supra, 381 U.S. at 175; Special Master's Report, *United States* v. *Louisiana*, No. 9, Original, *supra*, at 16.

[65] The court failed to explain how it could nevertheless rely upon the Shelikof Strait incident as the "clearest exercise of sovereignty" when that incident took place only a few weeks before the Legal Adviser issued the disclaimer in 1962 (compare Pet. App. 16a, 39a–41a, with *id.* at 12a, 45a–46a).

[66] As late as 1966, even Alaska may not have been convinced that all of Cook Inlet was internal waters of Alaska. Thus, in adopting a twelve-mile exclusive fisheries zone for the United States (see p. 29, *supra*), Congress relied in part upon Alaska's assertion that such a limitation "will clearly allow the closure to foreign encroachment of over 15 large bays and passes * * * such as Cook Inlet * * *." S. Rep. No. 1280, 89th Cong., 2d Sess., p. 2.

deemed them to be of "low reliability" in view of the "circumstances under which they were prepared" (Pet. App. 172a), in that "they were hastily prepared, [and] based on questionable research * * *" (*id.* at 45a).[67]

But even if that were an accurate characterization,[68] it ignores the fact that a disclaimer of jurisdiction reflects more than just a detailed examination of history or extended legal analysis. A disclaimer necessarily represents "the considered decision of the United States" concerning its borders and relations with other nations—a decision that it would be "inappropriate" for the courts to review or overturn. *United States* v. *Louisiana, supra,* 394 U.S. at 73; see also *Ex parte Peru,* 318 U.S. 578, 588–589 (suggestion of

[67] The court also asserted that the disclaimers were "offered in a self-serving effort by the federal government to have the Court disregard historic facts * * *" (Pet. App. 45a). The court cited no evidence in support of that assertion (compare *id.* at 46a–47a), and, as we have noted (see pp. 33–35, 55–56, *supra*), the disclaimers are consistent with other United States policies with conduct of its foreign relations. The "self-serving" characterization could equally be applied to the government's position in any federal-state dispute over coastlines since it is the responsibility of the federal government to determine international policy on this subject. This Court's acceptance of the disclaimer in the *California* case (see p. 54, *supra*) makes this inevitable criticism inconsequential.

[68] We assume *arguendo* that it is. However, we believe that the decision-making process underlying the disclaimers "should never have been subjected to this examination." *United States* v. *Morgan,* 313 U.S. 409, 422. The district court overruled the government's objection to the introduction of evidence concerning the work done by the principal draftsman of the original disclaimer (R. 3208) ("R." refers to the numbered pages of the district court record).

immunity of foreign nations). Indeed, this is why determinations by the political branches about the territorial extent of United States sovereignty are ordinarily binding on the judiciary. See *Jones* v. *United States,* 137 U.S. 202, 212; *Vermilya-Brown Co.* v. *Connell,* 335 U.S. 377, 380.

It cannot be doubted that the position taken by the United States concerning the status of waters off its coasts may be substantially affected by foreign relations considerations, such as the significance of the waters, the identity of the other nations likely to use those waters and our relationship to them, and whether the position taken by the United States would prejudice its claims that similar waters adjacent to other nations are high seas. Abram Chayes, the Legal Adviser to the State Department in 1962 when the first disclaimer was prepared, testified that this country's view of the status of lower Cook Inlet affected the position taken by the United States in regard to Canadian claims to historic waters in the Gulf of St. Lawrence and that it "was extremely important to us that we should be as pure in our own claims as we were insisting that Canada should be with respect to her claims."[69]

But because of the inherently political character of a disclaimer, the only proper question was whether the United States had made a relevant disclaimer of sov-

[69] Chayes Dep. 19–20. While we believe that the district court should not have looked beyond the face of the disclaimers (see p. 58, *supra,* n. 68), once it did so it should have respected the foreign policy considerations indicated by the former Legal Adviser's testimony.

ereignty, not whether it was "right" or whether enough research went into the decision. Cf. *Jones* v. *United States, supra*, 137 U.S. at 221. The disclaimers, as we stated above, represent the foreign policy of the United States in regard to the status of Lower Cook Inlet and are therefore entitled to great weight. And, where the evidence of historic title is as doubtful as it is here, the disclaimers should be given effect, as this Court held in *United States* v. *California, supra*.

CONCLUSION

The courts below treated as significant for international law purposes a variety of actions that heretofore neither the United States nor other nations would have regarded as establishing a claim of sovereignty over Cook Inlet as inland waters. Such a ruling by a United States court, nothwithstanding the contrary disclaimers, constitutes a potential embarrassment and burden to the United States in the conduct of its foreign relations on the sensitive subject of rights of littoral nations over coastal waters (see Pet. App. 67a–81a). The implications of the decision below for the rights of Canadian vessels to fish in lower Cook Inlet constitute, in Canada's eyes, a substantial and deleterious change of well-established understandings (*id.* at 73a–81a). The United States does not regard lower Cook Inlet as an historic bay and yet, if the decision below is permitted to stand, it will be seen by the other nations of the world as a declaration that the United States now regards all of Cook Inlet as inland

waters.[70] For the reasons discussed above, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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[70] The Department of State, after reviewing the findings of fact in this case, is of the opinion "that there is no evidence of any act which could establish a claim [to Cook Inlet as historic internal waters] based on the applicable international criteria" (Pet. App. 69a). Moreover, the State Department is "loath to make [such] an international assertion," thereby changing the position maintained by the United States internationally, because "[t]o do so could have serious adverse implications for our foreign relations" (*ibid.*) by making it more difficult to resist claims of other nations to extensions of their sovereignty and by impairing our existing rights to navigation and overflight (*id.* at 70a).

Appendix A

(Plaintiff's Exhibit 57*)

The Ambassador of Japan presents his compliments to The Honorable the Secretary of State and, with reference to the recent incident involving Japanese fishing boats off the coast of Alaska, has the honor, under instructions from his Government, to make the following representation.

1. A fishing fleet, consisting of the mother ship Banshu Maru No. 31 and five catcher boats, of the Higashi Taiheiyo Gyogyo K. K. (East Pacific Fisheries Company), was engaged in herring fishing in the Shelikof Strait lying between the Alaska Peninsula and Kodiak Island. On April 14, at about 1930 o'clock, the Alaska state authorities seized the catcher boat Ohtori Maru No. 5, which was temporarily anchored off Uganik Bay. At about 2110 o'clock of the same day, these authorities arrested Mr. Hanasaki, captain of the mother ship, who had hastened to the scene of seizure. At about 2330 o'clock of April 15, the same authorities proceeded to seize the catcher boat Tairyo Maru No. 61, which was temporarily anchored off Uyak Bay. The state authorities kept the captains and the ships concerned under detention until about 1030 o'clock of April 19, at which time the men were set free on bond, and the ships released, after being made to agree that the fleet would not conduct fishing operations in Shelikof Strait and Cook Inlet. The Alaska State authorities have indicted the captains of the Banshu Maru No. 31, the Ohtori Maru

* This exhibit was inadvertently omitted from the Appendix.

No. 5, and the Tairyo Maru No. 61, on the charges of violating Alaska state fishing laws and are going to put them on trial.

2. It appears that the above action of the Alaska state authorities is based on the position that the Shelikof Strait is an inland water of the United States of America. However, according to the opinion of the Government of Japan, it is clear that the Shelikof Strait is a part of the open sea, since there are no grounds whatsoever for recognizing that Strait as an inland water of the United States in the rules of international law. It is our understanding that the Government of the United States has never officially proclaimed this Strait to be an inland water. Attention is also invited to a report in a fishing industry periodical of the Soviet Union that a Soviet dragnet fishing boat operated in the waters of the Gulf of Alaska, including the Shelikof Strait, from March to May of 1961. Furthermore, the positions advanced by both the Japanese Government and the United States Government as regards the distance of the entrance of a bay which is to be considered an inland water has been ten nautical miles. It is considered that this principle will not be altered until the Geneva Convention on the Law of the Sea comes into effect.

3. It goes without saying that the United States of America has no jurisdiction over Japanese fishing boats in the open sea. As for the Ohtori Maru No. 5, the place of seizure has not been exactly known but the Government of Japan reserves its right to protest in case it is established that the seizure took place in the open sea. As for the Banshu Maru No. 31 and the Tairyo Maru No. 61, the Alaska state authorities have maintained that the operations of these ships in the open sea constituted a violation of Alaska state fishing laws. It is

obvious that Alaska state laws cannot be applied to activities of Japanese nationals in the open sea. Captain Hanasaki of the Banshu Maru No. 31 was arrested when he approached the Ohtori Maru No. 5 to look into the emergency caused by the seizure of that ship, although the captain had been in the open sea. It is understood that the Tairyo Maru No. 61 was likewise seized in the open sea. Inasmuch as these actions of the Alaska state authorities constitute a violation of the international law, the Government of Japan hereby protests to the Government of the United States and requests that the court actions against the captains of the Banshu Maru No. 31 and the Tairyo Maru No. 61, as well as those against the captain of the Ohtori Maru No. 5, in case it is found that the Ohtori Maru was seized in the open sea, be immediately suspended and the case be dismissed.

4. Fishing in the open sea is free with the exception of obligations imposed by international treaties. Under the International Convention for the High Seas Fisheries of the North Pacific Ocean, Japan is under obligation to voluntarily abstain from the fishing of salmon and halibut in the Gulf of Alaska area. However, the Japanese people have the right to fish for other kinds of fish in those waters. The commitment made by the Higashi Taiheiyo Gyogyo K. K. (East Pacific Fisheries Company) to the Alaska state authorities to abstain from operations in the Shelikof Strait and the Cook Inlet was made without the knowledge of the Government of Japan. Therefore, such a commitment does not in any way affect the position of the Government of Japan towards future fishing operations of Japanese nationals in those waters. The Government of Japan further protests the fact that the Alaska state authorities unduly ex-

tracted such a commitment from the Japanese fishing fleet by threatening the seizure of the entire fishing fleet.

5. It is surmised that it is the position of the Government of the United States that the status of the Shelikof Strait will be decided upon in United States courts. However, the scope of the territorial waters of a nation is defined by rules of the international law. It must be pointed out that, even if the Government of a certain nation, or its courts, should unilaterally proclaim waters beyond the limits prescribed by international law as its territorial waters, such proclamations cannot have any binding power on another nation, or its nationals, who do not recognize such actions.

6. The Government of Japan reserves the right to request the Government of the United States to compensate for all damages incurred in the past or to be incurred in the future by Japanese nationals in connection with the recent actions of the Alaska state authorities.

7. The Government of Japan is deeply concerned with the effects of the recent unilateral actions of the United States upon friendly relations between the two countries, and requests the Government of the United States to take appropriate steps immediately.

EMBASSY OF JAPAN.

WASHINGTON, *May 3, 1962.*

U.S. GOVERNMENT PRINTING OFFICE: 1975

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NO. 73-1888

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, *Petitioner*

v.

STATE OF ALASKA, *Respondent*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATE OF ALASKA, RESPONDENT

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BRIEF OF THE STATE OF ALASKA, RESPONDENT

OPINIONS BELOW ANALYZED

The United States correctly states that this case involves the question of whether the disputed area of Cook Inlet is historic inland waters. If so, the lower Courts correctly held that the State of Alaska has the exclusive right to the subsurface resources therein, pursuant to the Submerged Lands Act of 1953, 43 U.S.C. §1312, Sections 2(c) & 4.

The United States also correctly states the three legal criteria to be applied in deciding the basic question: (1) the exercise of authority or sovereignty over the disputed area by United States, its predecessor and Alaska; (2) the continuity of the exercise of that authority; and

(3) the attitude of foreign nations toward the exercise of authority.

As the case comes before this Court it has assumed an unusual and exceptionally narrow posture. This is so because the parties are in apparent agreement as to the general principles of law and the facts—a state of affairs that does not ordinarily lead to controversy and rarely to the need for final adjudication by this Court. During the course of a lengthy trial, the District Court heard the live testimony of numerous witnesses, considered some 36 depositions, and studied hundreds of exhibits. Thereafter the Court made one hundred eleven Findings of Fact which are unusually detailed, which refer to the specific evidence in the record upon which the Court relied, and which must be carefully studied for a fair summary of the case.

As to these one hundred eleven Findings of Fact, the United States has stated: "We accept the findings of fact of the district court." (Petitioner's Brief, p. 35, n. 35) (Also Petitioner's Brief, pp. 4, 21, 22) While it does not accept the lower Court's conclusions as to the importance of these facts, the United States has also conceded that "there is room for argument about the inferences to be drawn from the historic record." (Petitioner's Brief, p. 27) Under the circumstances it is the contention of Alaska that the case now requires only the application of traditional and long recognized principles of appellate review. The Court of Appeals agreed.

In considering the case, the Court of Appeals took note of this Court's decision in *Louisiana* (394 U.S. at 75), and recognized that the application of the legal principles of historic inland waters "raises primarily factual

questions" which is the task of the fact finder—in this case the District Court and in the *California* case the Special Master, 381 U.S. 139 (1965). Contrary to the United States' view, we believe this is a case in which this Court should follow the rule barring review of "concurrent findings of fact by two courts below in the absence of a *very obvious and exceptional showing of error.*" *Graver Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 274, 275 (1949). (Emphasis added) The United States has failed to show a very obvious and exceptional error, if indeed it has shown any error at all.

QUESTIONS PRESENTED

The State of Alaska cannot accept the phrasing of the questions in the United States' brief. (pp. 2-3) As the questions are presented, the United States has inserted self-serving factual assumptions which go to the heart of the case, and which are contrary to the facts (now agreed upon) found by the District Court on the issues of sovereignty, continuity, and acquiescence by foreign nations. For example, the first question posed by the United States assumes "the absence of any explicit claim to Cook Inlet as inland waters or of any sovereign acts interfering with the navigational rights of foreign nations to innocent passage therein" and then inquires in substance whether there has been a sufficient exercise of sovereignty over Cook Inlet. These assumptions are contrary to numerous fact findings. By way of illustration consider the following:

> "The State of Alaska has produced evidence, hereinafter referred to in subsequent Findings, which establishes clear beyond doubt that there has been an exercise of sovereignty over Cook Inlet by govern-

ments whose nationals have inhabited its shores sufficient to justify the status of the disputed area of Cook Inlet as an historic inland water bay of the United States and now of Alaska." (Finding 16) (Pet. App. C, p. 25a)

* * *

"The continuous patrolling of Cook Inlet and enforcement by agents of the United States of Acts and regulations throughout all of Cook Inlet was open, apparent, and visible to all—United States nationals and foreigners alike—who may have taken occasion to examine the conditions existing in Cook Inlet. These were deeds—and not merely proclamations—by which the intent of the United States to exercise sovereignty was clearly expressed." (Finding 47) (Pet. App. C, p. 32a)

* * *

"Cook Inlet is not and has never been a waterway for intercourse between nations. (Exhibits B through I, K)" (Finding 10) (Pet. App. C, p. 23a)

The second question as presented by the United States assumes "the absence of positive approval or affirmative acquiescence by foreign nations in any exercise of sovereignty over the waters of Cook Inlet", whereas the District Court found:

> "Foreign nations have tolerated and acquiesced in such exercise of sovereignty over Cook Inlet." (Finding 92) (Pet. App. C, p. 43a)

The last question presented by the United States inquires in substance as to whether the "clearly erroneous" test governed appellate review of the District Court's resolution of law questions. This is obviously a straw man approach, inasmuch as Alaska has never contended and

does not now contend that the "clearly erroneous" rule applies to law questions. The test, we do contend, governs appellate review of factual findings.

From Alaska's viewpoint a more fair statement of the principal issues to which this Court's attention should be directed is:

(1) Whether the Court of Appeals correctly applied the "clearly erroneous" test in its review of the District Court's fact findings that, among others, the State of Alaska has proved "clear beyond doubt that there has been an exercise of sovereignty over Cook Inlet . . . sufficient to justify the status of the disputed area of Cook Inlet as an historic inland water bay of the United States and now of Alaska"; that "the exercise of (such) sovereignty . . . has continued for such period of time as to have developed into a usage"; and that "foreign nations have tolerated and acquiesced in such exercise of sovereignty over Cook Inlet."

The other issues presented are subsidiary to the first issue:

(2) Whether a necessary prerequisite to the status of Cook Inlet as historic inland waters is proof of interference with innocent passage of foreign vessels; and

(3) Whether the trial court applied the correct standard of proof in light of the so-called disclaimers of jurisdiction over Cook Inlet by the United States.

STATEMENT OF THE CASE

Alaska cannot accept the United States' summary statement or numerous other factual statements that appear throughout its brief. Undoubtedly through inadvertence or

perhaps due to an unfamiliarity with the whole record, the Government's brief contains significant misstatements of fact in some instances and important omissions in other instances.

At this point we wish to point out a few of the more glaring examples. In discussing the Gharrett-Scudder charts, the Government states that these charts were transmitted to Canada with a disclaimer stating that they were not intended to enlarge or extend territorial waters in a legal and jurisdictional sense. (Govt. brief pp. 16-17) Such disclaimer, if actually sent, would admittedly be a most important bit of evidence and might seriously undermine the relevancy of the Gharrett-Scudder charts. As we view the record, however, it simply does not support the assertion that any such disclaimer was actually sent to Canada. It is true that internally some consideration was given by Government employees to the sending of such disclaimer but the actual letter of transmittal, as we will subsequently demonstrate, contained no such language.[1]

Throughout the Government's brief there is left the impression that foreign vessels, particularly Canadian ships, have fished in Cook Inlet for decades without interruption (Govt. brief pp. 52, 24, 13); and even that the frequent and unmolested voyage of Canadian vessels in Cook Inlet outnumbered the incidents of exercise of sovereignty beyond the three-mile limit. (Govt. brief p. 45, n. 47) These assertions fly in the teeth of the District Court's undisputed findings that:

> "Although, undoubtedly, the United States has made an exhaustive study of its records, it has only been

1. State Ex. IE 4 through IE 10, Tr. 413-415.

> able to offer evidence—inconclusive and disputed—which, if believed, would show only a few isolated intrusions of Canadian halibut vessels inside Cook Inlet, at least one of which was within the territorial sea of Cook Inlet. (Exhibits 78, 78A, 80; Hodgson's depos., Exhibit 5; Costello's depos., pp. 29-31)
>
> The number of such Canadian halibut vessels has been so small as to be *de-minimis*—particularly so when there is considered: (a) there were possibly only two undetected such occurrences before Alaskan statehood; (b) afterwards only five Canadian vessels have fished for halibut in Cook Inlet, none of which were detected by state law enforcement officials; (c) the time in question goes back more than sixty-six years; (d) never has there been any other foreign fishing activity, such as, for salmon or other species; . . ." (Findings 100 and 101) (Pet. App. C, p. 44a)

The Government refers to and quotes from a memorandum of the National Director (Albert Day) of the United States Fish and Wildlife Service, concurring in the opinion of the Solicitor of the Department of Interior. (Govt. brief p. 14) The Government, however, omits a most significant part of that memorandum and when the memorandum is read in its totality, it does not support the Government's argument, but confirms Alaska's position. This is made even more evident when his deposition testimony is considered. We shall also deal with this in subsequent portions of the brief.

We point out the foregoing matters, not for the purpose of belaboring distinguished opposing counsel but to invite the Court to study carefully the District Court's extensive findings of fact with which the Government now agrees and which contain a complete summary of the factual matters dealt with below.

SUMMARY OF ARGUMENT

1. *Sovereignty.* Applying the principles of law heretofore recognized by this Court and enunciated in the *Juridical Regime of Historic Waters, Including Historic Bays,* United Nations Secretariat A/CN, 4/143 (1962) the District Court addressed itself to the factual issues and properly found all of Cook Inlet to be inland waters. Specifically, it made factual findings, now accepted by the United States, that there has been a sufficient and continuous exercise of sovereignty over Cook Inlet so as to establish title to Cook Inlet as historic inland waters. Whatever significance or lack thereof, is to be accorded Russia's claim and control of Cook Inlet, the United States intensified the claim when it acquired Alaska. For the greater part of 92 years—from the time it acquired Alaska from Russia in 1867 to 1959 when Alaska gained statehood—the United States has made explicit claims to Cook Inlet through judicial decision, legislative acts, an executive proclamation and executive regulations. Those claims have been enforced by officials of the United States Government throughout all of Cook Inlet by the seizure of vessels and the arrest of individuals as well as by numerous boardings and continuous patrols.

The Government's argument that action was asserted only against American citizens—and therefore irrelevant —is erroneous, both factually and legally. As a matter of fact, a specific claim of United States sovereignty over Cook Inlet was made to Canada, when at Canada's request the Department of State transmitted without reservation, charts to Canadian fishing officials depicting the baseline along Alaska's coast for the purpose of measuring the three-mile limit for fishery regulation. A specific claim of Alaskan sovereignty over Cook Inlet was made to Japan

when offiicials of Alaska seized the Japanese fishing vessel, BANSHU MARU, shortly after it had passed through Cook Inlet and obtained a promise from the Japanese not to fish in Cook Inlet thereafter. The only reason Alaska did not arrest and seize the Japanese vessels in Cook Inlet is because it did not catch up with them until they anchored in the neighboring waters of Shelikof Strait. And the Government has properly recognized that the seizures, arrests and indictments were "indisputably an act of sovereignty directed at foreign nationals." (Govt. brief p. 46)

From a legal standpoint, however, according to the *Juridical Regime,* neither the United States nor Alaska had to take enforcement action against foreigners where their relevant laws and regulations, widely publicized and openly enforced, were respected. Under the fact findings by the trial court, now agreed to by the Government, there were no detected instances of foreign intrusions into the waters of Cook Inlet—except for the seized Japanese vessels—and hence the United States did not have to resort to particular acts of enforcement.

Contrary to the Government's assertion, there is no requirement that in order to establish historic title over inland water, there must be proof of interference with the navigational rights of foreign nations. The authorities on the subject of sovereignty all agree simply that action need only be taken under the municipal law of the claiming state, sufficient to maintain its claim.

2. *Continuity.* The District Court made six fact findings (86-91, Incl.), now also accepted by the Government, with regard to the continuity of the exercise of sovereignty. Typical of these is Fact Finding 86:

> "The exercise of sovereignty over Cook Inlet, the nature of which is indicated in the foregoing Findings, has continued for such period of time as to have developed into a usage. (Record as a whole)"

In apparent contradiction of its acceptance of the lower court's findings, the Government argues that the continuity was interrupted by periodic incursions of foreign fishing vessels who fished unmolested in Cook Inlet. This is simply not supported by the record, by the undisputed evidence, or by other accepted findings hereinabove noted.

3. *Acquiescence.* As noted, the United States at Canada's request, sent it the Gharrett-Scudder line charts which included all of Cook Inlet within the baseline for measurement of the territorial sea for fisheries regulation. Canada accepted the line without protest. In these circumstances Canada's action constitutes "acquiescence" as that term is employed in historic bay cases.

Even though Japan made one protest shortly after the 1962 arrests and seizures in Shelikof Strait, it has recognized Alaska's claim to Cook Inlet by not fishing therein any time since. This is in sharp contrast with the fact of Japanese fishing in other waters near Alaskan shores.

The claim of the United States and Alaska to Cook Inlet has been respected by all other foreign nations since no vessels of any such nations have fished in Cook Inlet or otherwise interfered with the sovereignty of the United States and Alaska over Cook Inlet. None has protested the claim to Cook Inlet as an historic inland bay by the United States and Alaska.

4. *Cook Inlet is not a historic territorial sea.* Having accepted in their entirety the trial court's extensive findings and expressing no disagreement with this and the lower court's adherence to the three legal requirements for the emergence of historic title, the Government is left with only one argument. It is that the sovereignty exercised over Cook Inlet was sovereignty over Cook Inlet as a territorial sea. The argument is bottomed upon an incorrect understanding of the factual record and a claim that there was no showing of interference with the innocent passage of foreign vessels in the waters of Cook Inlet.[2] The Government's only legal authority is believed to be an erroneous interpretation of a footnote reference by this Court in *Louisiana,* 394 U.S. at 24, n. 28, to a conceivable historic territorial sea.

The Government's argument, we believe, is erroneous —not only factually but also legally and for a variety of reasons. The dominant opinion, as noted in the *Juridical Regime,* is that historic bays, the coasts of which belong to a single nation or state, are internal or inland waters.

Article 7 of the Convention on the Territorial Sea and Contiguous Zone defines the baseline for the measurement of territorial sea from a line across the mouths of or within bays. Waters inside the defined line are inland waters. Accordingly, the only sensible meaning of Section 6 of Article 7 (the exception of historic bays) is that a baseline drawn across the entrance points of a historic bay also encloses inland waters.

The authorities, heretofore relied upon by this Court and the Government, are not in accord with the Government's argument. Both the *Juridical Regime* and the Mem-

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2. This argument, it would appear, flies in the teeth of the Government's acceptance of Fact Finding 10: "Cook Inlet is not and has never been a waterway for intercourse between nations. (Exhibits B through I, K)" (Pet. App. C, p. 23a)

orandum on *Historic Bays* decline to denote any one specially required act of sovereignty.

Although the record is largely silent on the point, it may be conceded that foreign vessels pass through Cook Inlet en route to Anchorage. But this proves nothing, because the interests of free international commerce have brought about an international custom that permits the free passage of foreign vessels through inland waters en route to harbors and ports.

5. *The Burden of Proof, Disclaimers and Foreign Relations.* The trial court imposed upon Alaska the burden of proving the historic claim to Cook Inlet by evidence "clear beyond doubt." This was done at the insistence of the Government that a more rigorous standard of proof was required in the face of disclaimers by the Government. Since the trial court accepted the Government's viewpoint, albeit with some misgivings, it is difficult now to understand the Government's argument that the court erred.

The Government argues now, as it did in the lower courts, that the conduct of foreign relations falls exclusively within the domain of the Executive and Legislative Branches of the Government. With this general proposition neither Alaska, the District Court nor the Court of Appeals disagreed. And also Alaska recognizes, as did the lower courts, that the Government has traditionally announced, as a matter of national policy, that the territorial sea should be limited to a width of three miles. And in the light of the language of Section 2(c) of the Submerged Lands Act of 1953, 43 U.S.C. §1301(c), it is agreed that the three miles is to be measured from "the line marking the seaward limit of inland waters."

But there is no presumption that the Government's traditional adherence to the three mile rule overrides equally well established principles of law with regard to historic bays. Where, as in this case, Alaska has succeeded in proving, clear beyond doubt, the historic claim to Cook Inlet as inland waters, this Court has heretofore held—and with manifest fairness—that the Government cannot distort its exclusive power over the conduct of foreign relations so as to ignore past events, take away an internal state's territory, and thereby claim for the National Government the ownership of valuable natural resources.

The foregoing five points will be developed in Parts One through Five in the following argument.

ARGUMENT

PART ONE

COOK INLET IS AN HISTORIC INLAND WATER BAY

The Court of Appeals decided that the District Court correctly applied the three-pronged test, noted above, adopted by this Court for resolving the question of the status of Cook Inlet as an historic bay.

The District Court also recognized that certain modifications have been imposed by this Court upon the principles of international law used in the determination of historic waters. We can best summarize these modifications by quoting from the District Court's opinion. The Court stated:

"The first modification pertains to the vantage point to be assumed by a court in judging the facts concerning the status of a bay as historic waters. In *United States v. Louisiana,* 304 U.S., at 77, the Court indicated that such a controversy should be viewed as if the claim were being made by the United States and opposed by another nation.

The second modification concerns the degree to which a coastal state may rely on its own assertions of sovereignty over disputed waters to establish historic title. In *United States v. Louisiana, Id.* the Court made clear that state exercises of dominion, as distinguished from federal assertions of sovereignty, may properly be considered on the issue of historic title.

The third modification pertains to the legal effect of a disclaimer by the United States that disputed waters are historic waters. In *United States v. California,* 381 U.S. at 175, the Court ruled that a disclaimer by the United States was decisive in view of the 'questionable evidence of continuous and exclusive assertions of dominion over the disputed waters.'

But the Court also stated at that point:

> 'We are reluctant to hold that such a disclaimer would be decisive in all circumstances, for a case might arise in which the historic evidence was clear beyond doubt.' Id.

In *United States v. Louisiana,* 394 U.S. at 77 the Court elaborated on its position by stating:

> '[I]t would be inequitable in adapting the principles of international law to the resolution of a domestic controversy, to permit the National Government to distort those principles, in the name of its power over foreign relations and external affairs, by denying any effect of past events.'

In a footnote to that excerpt, the Court further limited the legal effect of a disclaimer:

> 'It is one thing to say that the United States should not be required to take the novel, affirmative step of adding to its territory by drawing straight baselines. It would be quite another to allow the United States to prevent recognition of a historic title which may already have ripened because of past events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States v. California.* Id.' " (Pet. App. B, pp. 11a-12a)

As will be demonstrated in this brief, the Government's arguments, carefully analyzed, fly in the face of the above-quoted limitations imposed by this Court in these cases, and in particular do indeed call for an impermissible contraction of Alaska's territory.

THE COURTS BELOW PROPERLY FOUND UPON UNCONTRADICTED AND AMPLE EVIDENCE THAT SOVEREIGNTY WAS EXERCISED OVER COOK INLET AS INLAND WATERS.

A. THE FACTUAL RECORD PERTAINING TO SOVEREIGNTY.

1. Geographic and Economic Characteristics of Cook Inlet.

Among those water areas dealt with in the tideland cases, Cook Inlet is unique. As a clearly defined, well-

marked indentation, Cook Inlet is completely surrounded by the lands of Alaska so that it contains landlocked waters and geographically resembles a large inland lake. (Findings 1-8, incl.) (Pet. App. C, pp. 22a-23a) It is well marked by prominent headlands, inside of which, so the undisputed evidence showed, a mariner instinctively feels himself within the jurisdiction and domain of Alaska. (Finding 11) (Pet. App. C, pp. 23a-24a)[3] From the beginning of recorded history, according to the testimony of three other distinguished experts,[4] Cook Inlet has been vital to the economic interest and well-being of those persons inhabiting its shores; first, because of the fur trade, then fishing, and more recently, mining and petroleum activity. It has never been a waterway for intercourse between nations, but, on the contrary, all of Cook Inlet's waters have been and are such that at all times they have been easily patrolled and protected by the government entity which controlled its shores. (Finding 13) (Pet. App. C, p. 24a)

While these facts clearly distinguish Cook Inlet from those waters involved in other submerged lands cases, Alaska does not contend that standing alone they are sufficient to satisfy the three controlling criteria for the

3. Mitchel P. Strohl, currently the registrar and lecturer in political science at the American College in Paris, France, and formerly a Commander in the United States Navy, retiring after 22 years of active service, testified as follows:

"Q. All right, Professor, would you state what the reasons are for your opinion [that Cook Inlet is a necessarily inland body of water]?

A. I think, sir, that these fall into about six categories: The configuration of the shore; secondly, the concept of a landlocked body; third, the matter of entry, then the category of tides; fifth, this would be the weather, and finally, the navigation aids, I think about in that order." (A. 89; Tr. 465)

4. Two historians and an economist. *Infra*, pp. 17 and 44.

establishment of an historic bay. But neither are these facts irrelevant.[5] They led the trial court to find—and properly so—that the geographic and economic characteristics of Cook Inlet are such that it would have been unnatural had not the inhabitants of its shores, with the acquiescence of foreign nations, exercised continuous sovereignty over its shores and waters from the earliest times forward. (Finding 4) (Pet. App. C, p. 22a) And the Court further found, upon ample evidence that, had not the Cook Inlet fisheries been so controlled, the citizens of the United States and Alaska would have suffered disastrous effects through the loss and dissipation of these valuable fisheries. (Finding 14) (Pet. App. C, p. 24a)

2. Russian Sovereignty.

The trial court received the testimony of two distinguished historians, Mr. Robert DeArmond and Dr. William Hunt, not only with reference to claims of sovereignty by the United States and the State of Alaska over Cook Inlet, but also with regard to the rather intensive Russian activity in Cook Inlet prior to the Treaty of Cessions. (DeArmond Testimony A. 113; Tr. 520; Hunt Testimony A. 93; Tr. 474) We do not claim that the Emperor's Ukase of 1821, forbidding the approach of vessels within 100 Italian miles of the Alaska coastline, was valid or fully enforceable. We also concede that the

5. This Court in *United States v. Louisiana*, 394 U.S. 11, 23 (1969) recognized the importance of geographical features. The Court said:

"Certain shoreline configurations have been deemed to confine bodies of water, such as bays, which are necessarily inland."

See also State Ex.N (Tr. 438) and O (Tr. 439) where Delaware Bay and Chesapeake Bay were found to be historic inland waters of the United States in part on the basis of geographical features similar to those found to exist by the District Court in this case.

United States and other nations promptly protested the Ukase. This does not take away or minimize Russia's intense activity throughout Cook Inlet. But Alaska need not base, and does not base, its claim to Cook Inlet solely on the basis of the exercise of Russian sovereignty. What is far more important is the exercise of United States sovereignty over Cook Inlet after it acquired Alaska.

3. United States Sovereignty, Regulations, Statutes, Proclamations and Acts of Enforcement.

Before discussing the manner by which the United States exercised sovereignty over Cook Inlet, some preliminary comments on the Government's arguments are necessary. First, among other things, the Government relies on an alleged absence of an explicit declaration, executive or legislative, that Cook Inlet is inland waters. (Pet. Br. p. 39) The United States argues that absent such an explicit declaration the decisions of the courts below will usurp the traditional role of the executive in formulating the policy of the United States relating to maritime boundaries. The Government argues that the United States has traditionally attempted to limit national claims to the world's oceans. (Pet. Br. p. 33) The United States argues further that because of its policy, the various legislative acts relied upon by Alaska and the regulations and actions promulgated and taken thereunder must be construed to indicate an assertion of jurisdiction only over the area of Cook Inlet within three miles of the coastline. (Pet. Br. p. 9 fn)[6]

6. Recognizing the weakness of this argument, the Government further argues that even if there were an application of these Acts over all of Cook Inlet, it was an assertion of jurisdiction over Cook Inlet as territorial sea, not inland water. This will be discussed *infra* pp. 51-55.

The foregoing argument is erroneous for at least two reasons. *First,* while it is true that the three-mile limit has been a cornerstone of the United States' position in international law, it is likewise true that the doctrine of historic bays has been equally ingrained. Witness, for example, such bays as Delaware Bay and Chesapeake Bay,[7] traditionally claimed and recognized as United States historic bays, and even more recently, Long Island Sound.

Thus, there are two co-existing and well established doctrines of law—the three-mile limit and historic bay doctrines. When the United States seizes upon the first doctrine to the exclusion of the second, it assumes the point at issue, to wit: that waters beyond three miles from the Cook Inlet coastline were not claimed as an inland bay. The fallacy of such reasoning is at once obvious.

Second, the argument will not withstand close historic scrutiny. The United States argues that the language of the various statutes and proclamations (The Alien Fishing Act, The White Act and The Southwestern Alaska Fisheries Reservation) are not express assertions of sovereignty over all of Cook Inlet because the language therein, such as "waters of Alaska under the jurisdiction of the United States" is not clearly an assertion of jurisdiction. This brings us to the fundamental question: Was jurisdiction (or sovereignty) asserted by the United States over Cook Inlet as *waters of Alaska?* Put another way, the question

7. At the present time, applying the principles of the Convention on Territorial Seas and Contiguous Zones, both Delaware Bay and Chesapeake Bay would be recognized as juridical bays. But long before such Convention was held, they were recognized as historic inland bays notwithstanding the foreign policy then enunciated by the United States. (See 1 Op. A.G. 32 (1852); State Ex. N; Tr. 438; *Stetson v. U. S.,* No. 3993, Class 1 (2d Court of Commissioners of Alabama Claims; State Ex. O; Tr. 439)

is: Were the waters of Cook Inlet claimed by the United States as "waters of Alaska under the jurisdiction of the United States?" To answer the question, it is necessary to trace the history of various statutes that have been enacted with respect to the waters of Alaska. It is necessary also to depict the claims to Cook Inlet at the time each statute and regulation was promulgated in the light of the evidence in this case.

At the outset, the rights of Russia as to its jurisdiction and sovereignty in Cook Inlet passed unimpaired to the United States at the time of the Treaty of Cession in 1867. (Finding 22) (Pet. App. C, p. 26a) The United States thereafter accelerated and augmented the exercise of sovereignty over all of Cook Inlet. The principal area of United States' concern was in the management and control of Cook Inlet's fisheries so as to avoid their dissipation and consequent economic disaster to American citizens.

(a) Revised Statute 1956 and the Kodiak case.

The fact of United States' jurisdiction over all of Cook Inlet was first determined judicially when the United States District Court of the District of Alaska upon the urging of the Justice Department held that the arrest of the vessel KODIAK was an assertion by the United States of territorial jurisdiction over Cook Inlet. (*The Kodiak*, 53 Fed. 126 (1892)) The Revenue cutter MOHICAN arrested the KODIAK and two other vessels, the LETTIE and JENNIE for alleged violations of R.S. 1956. That statute provided that no person shall kill otter or other fur bearing animals "within the limits of Alaska Territory or in the waters thereof." Thus it was that the Court in the *Kodiak* case was faced with the same contention now

urged by the United States, to wit: that since the defendant had allegedly killed fur bearing animals more than three miles from the shoreline of Cook Inlet, the statute was not applicable because the phrase "in the waters thereof" should be construed to mean a distance not exceeding three miles from the shore of Cook Inlet. As we see it, this is precisely the contention now urged by the United States. The Court said:

> "The contention is not a valid one.
>
> * * *
>
> . . . it can hardly be claimed that any portion of Cook's Inlet is 'high seas', within the accepted meaning of the phrase, for it is well landlocked by islands extending from Kodiak Island to Cape Elizabeth, on the east, and can only be entered by coming in near some of these islands, or by the way of Shelikof straits. (53 Fed., p. 128)"

The Court, it will be noted, recognized a fundamental geographical distinction between Cook Inlet and areas such as the Bering Sea (see *Whitelaw v. U. S.*, 75 Fed. 513 (9th Cir. 1896) and the open Gulf of Alaska (see *Pacific Trading v. U.S.*, 75 Fed. 519 (9th Cir. 1896))[8]

Having taken the unique geographical status of Cook Inlet into consideration, the Court made clear that its basis for deciding that the United States exercised jurisdiction rested upon assertions of sovereignty over Cook Inlet by the United States:

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8. The Government relies on *Whitelaw* and *Pacific Trading* in support of its argument that R.S. 1956 did not apply in areas more than three miles from shore. (Pet. Br. pp. 8-9) Since those cases applied to the Bering Sea and the open Gulf of Alaska respectively, they have no application to "landlocked" Cook Inlet.

> "National dominion and sovereignty may be extended over the sea as well as over the land, and in our government, when Congress and the President assert dominion and sovereignty over any portion of the sea, or over any body of water, the Courts are bound by it." (53 Fed. p. 130)

The quoted language of the Court in *Kodiak* is simply a paraphrasing of the requirement that, in the emergence of historic title to inland waters, there must be an assertion of jurisdiction or sovereignty by the claiming nation —a principle of law which no one, including the United States, would contend has been overruled.

In further attacking the *Kodiak* decision, the United States has argued the KODIAK was an American vessel and its seizure was not an act effective upon foreign nationals (Pet. Br., p. 7). In so arguing, the United States misses the point of the *Kodiak* case. Obviously, neither a United States citizen nor an alien can be convicted of a statutory violation unless he comes within the ambit of the statute. In the *Kodiak* case the statute, as we have seen, prohibited any person killing fur bearing animals "within the limits of Alaska territory, or the waters thereof." If the defendant, whether he be American citizen or alien, had taken the fur bearing animals outside the waters of Alaska, he obviously would not have violated the statute. This necessarily led the Court in the *Kodiak* case to a determination of the limits of the waters of Alaska, a decision which, in the light of the express wording of the statute, was an essential finding in determining the guilt or innocence of the defendant, irrespective of his nationality. Thus, the Court's decision that all of Cook Inlet was within the national dominion and sovereignty of the United States was just as clear an assertion of sov-

ereignty by the Executive and Legislative Branches of our Government as if the indictment had been brought against a foreigner. The point was expressly made in *Whitelaw v. U. S.*, 75 Fed. 513 (9th Cir. 1896). There R. S. 1956, insofar as the Bering Sea was concerned, had been amended so as "to include and apply to all of the dominion of the United States in the waters of the Bering Sea; . . .," (75 Fed. 513, 515). Against the Government's argument that this statute could reach American citizens even on the high seas, the Court stated:

> "These questions have no bearing as to the interpretation to be given to the statutes under review. These statutes, whatever their interpretation may be, must be applied to citizens and subjects of all nations, and were not intended to apply only to citizens, subjects, and vessels of America." (75 Fed., p. 518)

Hence, the statute was operative against aliens and citizens alike in waters over which the United States had jurisdiction.

The Court's decision in the *Kodiak* case was well publicized, both in newspapers and official reports; and the then Attorney General of the United States, expressly informed of the decision obviously agreed with the decision and the action taken.[9] (State Ex. BV; Tr. 380) Moreover, the decision of the District Court in the *Kodiak* case was adhered to the following year when two vessels, the OLGA and MARY ANDERSON, were boarded for alleged similar violations in the disputed area of Cook Inlet. (Findings 23-30) (Pet. App. C, pp. 25a-28a)

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9. The Government overlooks this fact when it states that the decision received no further public notoriety other than the published newspaper reports. (Pet. Br. p. 7)

(b) The Alien Fishing Act.

With the precedent of the *Kodiak* case before it—a clear-cut judicial holding that Cook Inlet was water over which the United States had asserted jurisdiction—Congress enacted the Alien Fishing Act in 1906. This Act prohibited aliens from fishing in waters of Alaska under the jurisdiction of the United States.[10] There can be no doubt that the earlier arrests demonstrated that the waters of all of Cook Inlet were waters under the jurisdiction of the United States subject to the Alien Fishing Act and therefore waters from which aliens were excluded. In fact, with such a clear precedent immediately before it, it cannot be seriously argued that the Congress did not or could not have taken the *Kodiak* precedent into account when, on two occasions, 1906 and 1924, it enacted significant legislation affecting Cook Inlet.

From the time of the passage of the Alien Fishing Act and up through the time of Alaska Statehood when the State of Alaska assumed control of Alaska's fisheries, all waters of Cook Inlet inside a line drawn from Point Gore through the Barren Islands to Cape Douglas, as well as the adjacent territorial sea, were patrolled for the purpose of enforcing the Alien Fishing Act. Thus, the effect of the Act was to exclude aliens both from fishing within the inland waters of Cook Inlet inside a line drawn from Point Gore to Cape Douglas, and from fishing within the territorial sea three miles seaward of that line. (Findings 31-34) (Pet. App. C, p. 28a)

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10. The operative words of R.S. 1956, the Alien Fishing Act, and The White Act are strikingly similar. Hence R.S. 1956 applied to all persons "within the limits of Alaska territory or in the waters thereof"; and The White Act of 1924, to be discussed *infra* pp. 27-34 applied to "any of the waters over which the United States has jurisdiction."

The fact that the Alien Fishing Act was enforced in the disputed portion of Cook Inlet was confirmed by former enforcement personnel of the United States. The testimony of Albert Day, former Director of the United States Fish and Wildlife Service, clearly discloses that all of Cook Inlet landward of a line from Cape Douglas through the Barren Islands to Point Gore was water of Alaska under the jurisdiction of the United States from which aliens were excluded. Mr. Day testified that it was his policy not to permit foreign fishing within the three-mile limit which he described on Exhibit 1 to his deposition:

(State Ex. F-O; Tr. 359)

"Q. All right. But as to your interpretation of the regulations and the three-mile limit with respect to Cook Inlet, you have testified that you would have measured the three-mile limit and you did during your administration from the red line drawn on this map? [The line extended from Cape Douglas through the Barren Islands to Point Gore]

A. That is correct, to the best of my recollection.

Q. Now, with respect to foreign fishing activities in Cook Inlet, while you were Director, would it have been your policy to permit foreign vessels to fish within the red line drawn on that deposition Exhibit 1?

A. No, it would not."

(A. 274-275; R. Day's Depos. p. 16)

Donald Erickson, who was an enforcement officer in Cook Inlet in 1941 testified explicitly with reference to the Alien Fishing Act:

"Q. When you were in the Washington, D.C. office, did you formulate or was there formulated any

policy, concerning foreign fishing activities in Cook Inlet?

A. Well, there was really basically no policy to formulate. It was against the law, for an alien to fish in the waters of Alaska.

* * *

Q. When you referred to Cook Inlet, in your statement regarding the alien fishing, what areas of Cook Inlet did you refer to?

A. Well, the whole thing. The description of it is Cape Douglas to Point Gore, including the Barren Islands. We prepared charts, showing those designations."

(A. 289-290; R. Erickson's Dep. p. 11-13, incl.)

Don Roberts, who was responsible for the management and enforcement of the fisheries in Cook Inlet in 1954, testified as follows:

"Q. When you say 'the regulations would prohibit it,' what do you rely on in making that statement?

A. Well, back in there you are talking about 18, 19 or 20 years ago here, but somewhere in here, I don't think it would be too hard to find, there is an alien—a prohibition against foreign vessels or alien vessels fishing in Alaskan waters, and if they had been in Cook Inlet as described in the regulations—* * *

A. . . . if there had been any vessels in Cook Inlet as described by the regulations, we would have apprehended them because it prohibited the taking of fish from this area by foreign vessels." (A. 77; Tr. 319-320)

Fred Headlee, who was responsible for the enforcement of United States fisheries laws in Cook Inlet in 1944 and 1945, gave similar testimony. (A. 80-81; Tr. 340)

(c) The Southwestern Alaska Fisheries Reservation.

The intensity of sovereignty exercised by the United States over Cook Inlet increased in direct proportion to the increased concern of the United States over Cook Inlet's fisheries. Hence, the geographic area of Alaska in which Cook Inlet is located was singled out for special treatment in 1922. In that year President Harding, by Executive Order, created the Southwestern Alaska Fisheries Reservation. The regulations under that Order defined the Cook Inlet area as that area " . . . north of the latitude of Cape Douglas . . . including the Barren Islands . . . and all the shores and waters of Cook Inlet." (State Ex. 22; Tr. 89) As to those waters, the Presidential Order admonished:

> "Warning is hereby given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned." (State Ex. 21, Tr. 89)

That warning struck home on May 27, 1924 when two American halibut vessels, the ZAPORA and NEW ENGLAND were arrested and boarded by an enforcement agent of the United States for fishing in the disputed area of Cook Inlet without first obtaining the required authority. Clearly from the period beginning in 1892 to the ZAPORA and NEW ENGLAND boardings in 1924, the United States had treated all of Cook Inlet's waters as its own and had exercised sovereignty therein. (Findings 35-39) (Pet. App. C, pp. 29a-30a)

(d) The White Act.

In 1924 Congress passed the "Act for the Protection of the Fisheries of Alaska and for Other Purposes" (herein-

after referred to as The White Act), 43 Stat. 464. That Act, which was passed in response to a severe menace to Alaska's fish resources (State Ex. AK; Tr. 394), was the successful culmination of the United States' efforts in achieving complete and exclusive sovereignty over Cook Inlet. The Secretary of Commerce and later the Secretary of the Interior were given authority to "set apart and reserve fishing areas in any of the waters over which the United States has jurisdiction." Here again the Executive Branch of the Government was called upon to determine whether or not all of the waters of Cook Inlet were included within "the waters of Alaska over which the United States has jurisdiction." Again, the United States acted clearly and unmistakably.

The Secretary of Commerce and later the Secretary of the Interior, from 1924 to 1959, a period of 35 years, defined the waters over which the United States has jurisdiction ". . . *to include Cook Inlet,* its tributary waters and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included." (Emphasis supplied) (Laws and Regulations for the Protection of Fisheries of Alaska, Department of Commerce, December, 1924; State Ex. IU; Tr. 322; Findings 42, 44; Pet. App. C, pp. 30a-31a)

As previously noted, the United States has argued that this regulation should be narrowly construed and that all the waters of Cook Inlet should not be included, but only the "territorial and coastal" waters extending three miles from the shoreline of Cook Inlet. The Government's argument is an unnecessarily narrow interpretation of the regulation and unsupported by both its plain meaning and other uncontradicted evidence.

First, unlike Cook Inlet, other areas of Alaska pertaining to bays, such as Bristol Bay and Resurrection Bay, were defined so as to restrict any claim of jurisdiction to "territorial, coastal and tributary waters."[11] The absence of those words in the definition of Cook Inlet, contrasted with the inclusion of the words "to include Cook Inlet . . . and all adjoining waters north of Cape Douglas, etc." makes unmistakably clear the meaning of the regulation in question. In fact, we suggest that, if today the author of the regulations were given the chore of asserting United States sovereignty over Cook Inlet, he would have difficulty in finding clearer and more precise words than the words used in the definition of the Cook Inlet area.[12] At no point in the presentation of this case, either in the District Court, the Court of Appeals or this Court, have the Government attorneys been able to suggest how more clearly and expressly jurisdiction could have been asserted over all of Cook Inlet than the definition contained in the aforesaid regulation.

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11. The United States argues that other areas of Alaska were treated in a manner similar to Cook Inlet, namely the Yukon-Kuskokwim and Resurrection Bay areas. Alaska respectfully disagrees. The applicable regulations define those areas in terms of territorial, coastal and tributary waters. Moreover, the regulations defining the Aleutian Islands area refer to territorial, coastal and tributary waters. The regulation defining the Kodiak area does not include specifically Shelikof Strait. With respect to the regulation defining the Bering River-Yakataga area, the Government is not clear as to what areas of high seas its claims included. A reading of the regulation does not disclose any such area. Be that as it may, the fact remains that without exception the only area defined under The White Act from 1924 through 1956 without reference to "territorial, coastal and tributary waters" was the Cook Inlet area. (State Ex. IU; Tr. 322)

12. In fact, the Government's principal witness at trial, Howard Beltzo, was unable to devise a definition expressing United States jurisdiction over Cook Inlet with more clarity than the one in effect from 1924-1956. (A. 33; Tr. 202)

Secondly, numerous witnesses testified that officials of the United States Bureau of Fisheries and its successor agencies regularly and continuously patrol the whole Cook Inlet area as defined in the regulations for the purpose of enforcing The White Act. Excerpts from this testimony have been heretofore quoted, particularly the testimony of Albert Day.[13]

This testimony is not inconsistent with Day's memorandum cited in the Government's brief. (Govt. brief p. 14) The key question, of course, is where is the baseline to be drawn from which the three miles seaward is to be extended. Obviously, it would be unlawful to enforce The White Act beyond the three-mile limit which, according to Mr. Day, was measured from the Cape Douglas, Barren Island, Point Gore line. And then, as the Chief Counsel suggested, Mr. Day testified that The White Act was to be enforced in the entire area of Cook Inlet as defined by the regulations.[14] The full significance of Mr. Day's testimony is brought home by a reference to that portion of the Chief Counsel's memorandum which the Government's attorney saw fit to omit. The Government closed its quotation of the memorandum with a reference to the proposition that the Alaska Commercial Fisheries Acts and "their application to citizens *may be* quite different from that involved in their application to foreign vessels" but then the memorandum continues with this most significant language:

> "It is doubted that the reference is intended to be strictly construed. In any event, one of the means by

13. The testimony of other witnesses indicating enforcement of The White Act and its regulations over all of Cook Inlet appears at pages 31-47 of Alaska's Post Trial Brief (R. 362a-364b)

14. (A. 271-273; Day's Depos. pp. 10-13, incl.)

> which a historic base status may be established is to claim jurisdiction at least over the citizens of this country in such waters."[15] (State Ex. BQ; Tr. 360)

The Government attempts to refute on several grounds the fact that the United States exercised sovereignty over Cook Inlet by virtue of its statutes, regulations and acts governing fisheries. None of the Government's arguments will withstand close scrutiny.

The Government attempts to detract from the character of the statutes and regulations by arguing that they involved only the regulation of fishing. (Pet. Br., p. 41) As will be demonstrated hereunder, *infra* p. 41 the regulation of fishing is the most common method of asserting a claim to inland water.

Then the Government argues (Pet. Br. p. 43) that the enforcement was done pursuant to the authority of a nation to enforce fishery laws against its nationals on the high seas, *Skiriotes v. Florida*, 313 U.S. 69 (1941). However, the Government fails to perceive two crucial distinctions. First, the testimony of all the witnesses, and the regulations themselves treated Cook Inlet as waters of Alaska, not high seas, and second, The White Act, unlike the Florida statute in *Skiriotes*, was by its terms limited to waters of Alaska over which the United States has jurisdiction and not expressly expanded to include the high seas.

15. In a subsequent memorandum dated May 8, 1953, from Dan H. Ralston, the Fish and Wildlife Service Law Enforcement Supervisor in Juneau to his agents in Cordova and Anchorage, the Day memorandum referred to is enclosed. Mr. Ralston said in part: "I am not in complete agreement with counsel regarding Cook Inlet, as it is my opinion that this Inlet is and has been historically claimed as territorial waters." (State Ex. BQ; Tr. 360)

Along the same line, the Government argues that the enforcement activity was carried on pursuant to various treaties under which the United States may enforce laws against its citizens on the high seas. The basis for such a statement is wholly without support in the record and again contradicts the testimony as well as the plain language of the statute and regulations. Lastly, along the same line, the Government argues that the patrols, boardings and arrests were carried out in Cook Inlet to solely enforce the landing law. In making this argument the Government ignores the fact that none of the arrests were based on a violation of the landing law. (Findings 49-54; 70-71; Pet. App. C, pp. 33a-34a; 38a-39a)[16]

Finally, the Government argues (Pet. Br. pp. 48-51) that the acts upon which Alaska relies were not "notorious" and that Alaska uses subtle and elaborate arguments to reach the conclusion that sovereignty was exercised over Cook Inlet. It is hard to find subtlety in the *Kodiak* decision, The White Act and regulations defining Cook Inlet and other areas, and in the clear testimony of the various witnesses. The United States ignores the fact that the regulations were printed by the hundreds and thou-

16. The uncontradicted testimony of Donald M. Stewart, Management Biologist in Cook Inlet for the Alaska Department of Fish and Game, clearly refutes the Government's assertion. Mr. Stewart testified that a disastrous depletion of the salmon stock would occur if the fish and game regulations had not applied throughout all of Cook Inlet. He further testified:

"Q. . . . now would your answer be the same, and would the disastrous effect occur if instead of no regulations at all being applicable to the center part of the water, but the landing law was in effect?

A. Again, in my opinion the effects should be the same.

Q. Yes, sir, notwithstanding the landing laws?

A. Right."

(A. 142; Tr. 588)

sands and distributed to fishermen (A. 80; Tr. 339) as well as to officials of foreign nations, including Japan and Canada. (A. 163-164; Tr. 643-644) Additionally, as will be demonstrated hereunder, the nations most likely to be interested in Cook Inlet, Canada and Japan, were made aware of the claims of the United States—Canada by being furnished the Gharrett-Scudder lines (*supra* pp. 34-36, 46); and Japan through the arrest of its vessels in Shelikof Strait after transiting Cook Inlet (*supra* pp. 37-39). Thus the District Court had no alternative but to find that the jurisdiction of the United States over Cook Inlet was open and apparent. And the success with which the enforcement was carried out and the extent of its notoriety is shown by the fact that except for a few isolated Canadian halibut fishermen, no foreigners fished in or attempted to fish in Cook Inlet.[17] Moreover, the evidence clearly showed that when the occasion arose, in addition to numerous boardings[18] in the disputed area, those found in violation of the laws were arrested and where necessary,

17. The exclusivity of the American fishery in Cook Inlet was recognized when in October of 1930 the Commissioner of Commerce ordered certain charts destroyed which depicted portion of Cook Inlet as high seas. In his letter dated October 20, 1930, the Secretary of Commerce wrote:

"In my opinion, the designation on this chart of territorial waters and high seas may prove exceedingly harmful and detrimental to American fisheries industry. In spite of the statement that the chart has no official sanction or significance in respect to what constitutes high seas or territorial waters, it seems to me that it is, in effect, *an invitation to foreign fishery interests to invade waters which heretofore have always been considered as open only to nationals of the United States.*" (State Ex. AR; Tr. 366) (Emphasis supplied)

18. A high-ranking United States official testified that such boardings are acts of enforcement and constitute a serious occasion. (Baltzo Testimony, A. 19; Tr. 176)

their vessels and gear were confiscated.[19] (Findings 40-57; Pet. App. C, pp. 30a-35a; see particularly Findings 45-56; Pet. App. C, pp. 31a-35a)

(e) The Gharrett-Scudder line.

One of the United States' most significant assertions of authority over all of Cook Inlet took place in 1957 and 1958 when the United States communicated to Canada, in a classic manner, its claim to Cook Inlet. In order to delineate the waters of Alaska from the high seas, in 1957 the Department of the Interior promulgated a regulation defining the waters of Alaska as all those waters north and west of the international boundary at Dixon Entrance extending " . . . *3 miles seaward* (1) from the coast, (2) *from lines extending from headland to headland across all bays,* inlets, straits, passes, sounds and entrances." (50 C.F.R. §101.19 (1957)) (Emphasis added)[20] In 1957 Canada and the United States also proposed the prohibition of the taking of salmon with nets from the high seas. Because of this proposal Canada requested the United States to furnish it charts depicting the location of the line described in the above-quoted regulation. The United States responded and on or about October 15, 1957, sent to the Canadian Government

19. The United States argues that since most of the charges which formed the basis of the arrests were dismissed, there was no exercise of authority. However, any dismissals were in all instances based upon a failure to prove the merits of the charge and not based upon a lack of jurisdiction.

20. This definition was intended to codify by regulation the description of waters in which the Alaska fishing regulations had applied. (State Ex. EX; Tr. 409) Of particular significance is the reference to the three-mile limit. This is a concept solely applicable with reference to the definition of the location of the territorial sea. (See Naab Deposition No. 2; pp. 97-99; A. 440-442)

charts depicting the line, thereafter known as the Gharrett-Scudder line. The Gharrett-Scudder line, which was depicted as *the baseline for the measurement of the territorial sea* for fishery regulation, enclosed as inland waters all of the disputed area of Cook Inlet. As will be shown hereunder, Canada did not contest or oppose the claim made to Cook Inlet. (Findings 58-63; Pet. App. C, pp. 35a-37a) The Gharrett-Scudder line and the regulations upon which it was based, confirm as of the date of Alaska Statehood, the status of Cook Inlet as inland waters of the United States.

In attempting to derogate from the significance of the United States' claim to Cook Inlet through the transmission of the Gharrett-Scudder line charts to Canada, the Government states at pages 16-17 of its brief:

> "The United States transmitted charts reflecting the Gharrett-Scudder line . . . to Canada accompanied by a disclaimer stating that they were not intended to enlarge or extend territorial waters in a legal and jurisdictional sense."

This, we submit, is not an accurate statement of the facts. To the contrary, the letter from the Second Secretary of the United States Embassy in Ottawa to Mr. G. R. Clark, Deputy Ministry of Fisheries of Canada, dated October 15, 1957 (State Ex. JF; Tr. 701) reads as follows:

> "In connection with the above regulations [regulations defining the waters of Alaska] I am pleased to transmit two sets of charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based. The charts were prepared by the Fish and Wild Life Service of the Department of the Interior."

Even if the United States had indicated that the charts were not intended to enlarge or extend territorial waters of Alaska, the result is the same. Since, as demonstrated in other parts of this brief, all of Cook Inlet had for many years been treated as waters of Alaska under the jurisdiction of the United States, the Gharrett-Scudder charts merely confirmed that fact.

In a further attempt to derogate from the significance of the Gharrett-Scudder charts the Government argues there is no evidence the charts were communicated to countries other than Canada. The record is clear that the one country having the most interest in Cook Inlet area was Canada. The record is devoid of any evidence that vessels of any nation other than Canada had appeared in the Cook Inlet area at or prior to the time of the drafting and transmitting of the Gharrett-Scudder charts. The interest of Canada was even negligible as indicated by the fact, uncontested by the evidence, and now admitted by the United States, that up to the time of the transmittal of the charts there were possibly only two undetected occurrences of Canadian halibut vessels fishing in Cook Inlet. (Finding 101; Pet. App. C, pp. 44a-45a)

4. Exercise of Sovereignty by Alaska.

The District Court found on the basis of undisputed evidence that after the State of Alaska took over control of its own commercial fisheries on January 1, 1960, it asserted continuous authority over the fisheries in Cook Inlet in the same manner as done by the United States since the arrest of the KODIAK in 1892. Alaska continued in effect substantially the same definition of the Cook Inlet area and distributed regulations containing that definition to authorities of the United States and

representatives of Japan, Canada and other foreign nations. No objection was ever received concerning the definition. The Court found that officials of the State have regularly and continuously patrolled all of Cook Inlet for the purpose of enforcing State fishing laws, and that when violations of the laws occurred, arrests were made.[21] (Findings 64-72; Pet. App. C, pp. 37a-39a)

The vigor with which Alaska pursued its claim to Cook Inlet is perhaps nowhere better demonstrated than in the Shelikof Strait incident, an incident which the District Court characterized as the clearest exercise of sovereignty by the State. On or about April 15, 1962, Alaskan fishery enforcement officials arrested three Japanese fishing vessels, one of which was more than three miles from shore in Shelikof Strait. The arrest was one event in a train of events involving the Japanese with Cook Inlet.

A Japanese fishing vessel, BANSHU MARU, and two other fishing vessels, had intruded into the southernmost part of lower Cook Inlet near the Barren Islands and then immediately proceeded into the nearby waters of Shelikof Strait. Having been forewarned that such Japanese fishing vessels intended to intrude into those waters to establish historic Japanese fishing rights therein, the Governor of Alaska, after seeking in vain to obtain immediate action by our State Department,[22] authorized the

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21. Contrary to the statement contained in the Government's brief (Pet. Br. p. 20) two non-residents were prosecuted in 1970 not for violation of a landing law, but for fishing in a closed area. The defendants were notified of the violation, not when "they landed in Alaska", but by enforcement aircraft flying over the area where the defendants were fishing. (A. 165-173; Tr. 660-674)

22. On a prior occasion, the United States informed Alaska that in cases of foreign fishing in Alaskan waters, the State should take appropriate action itself. (Finding 76; Pet. App. C, p. 40a)

arrest of three Japanese vessel captains and the boarding of two Japanese fishing vessels, at least one of which was more than three miles from Alaska's shores. The District Court has dealt at length with this incident in its Findings of Fact. (Findings 73-85, incl.; Pet. App. C, pp. 39a-42a) These Findings need not be repeated here. It is significant to note, however, that they are not in dispute and show clearly beyond doubt the most vivid exercise of sovereignty against foreigners. There was evidence that, with the knowledge of the Government of Japan[23] (notwithstanding its subsequent protest), the Japanese fishing company agreed in writing with Alaska thereafter not to fish in any part of the disputed area of Cook Inlet. Since then no such fishing by any Japanese citizen or vessel has taken place in Cook Inlet, although fishing has subsequently occurred elsewhere in the vicinity of Alaska.

The United States itself, even though given the opportunity to do so, did not dispute Alaska's action in claiming Cook Inlet. On May 3, 1962 the Japanese Government protested to the United States the arrests and boardings in Shelikof Strait, and the fact that the Japanese fishing company agreed not to fish in Cook Inlet.

Despite the Japanese protest and despite a contrary suggestion made by a lawyer for the State Department, the official reply of the United States did not state that either Cook Inlet or Shelikof Strait was international waters. To the contrary, the United States' reply said that the matter included questions of fact and law for the courts,

23. Ishimura Testimony, A-60; Tr. 273: "Q. Mr. Ishimura, you were then aware, were you not, that the Japanese Government was consulted by your company about this agreement . . . ? A. Of course, yes . . ."

presumably questions of law and fact similar to the case at bar. The incident closed by a statement by the President of the United States to the Governor of Alaska that Alaska did the right thing in seizing the Japanese vessels and enforcing Alaska's jurisdiction. (Findings 73-85; Pet. App. C, pp. 39a-42a)

On the basis of the factual record discussed above, there can be no doubt that the courts below correctly found that the United States and Alaska have consistently exercised authority over all the waters of Cook Inlet landward of the line joining Port Gore, Cape Douglas and the Barren Islands. The evidence on the issue of sovereignty is unrefuted, uncontradicted, and clearly not conflicting. For that reason, as the following portion of this brief will demonstrate, the Judgment, Findings and Conclusions of the District Court, as well as the opinion of the Court of Appeals should be upheld.

B. LEGAL PRINCIPLES PERTAINING TO SOVEREIGNTY

The courts below concluded and each party agrees that the authority which a nation must exercise over bays in order to claim them as historic waters is *sovereignty*. *Juridical Regime of Historic Waters, Including Historic Bays,* United Nations Secretariat A/CN, 4/143 (1962) 85. (Hereafter referred to as *Juridical Regime*) The fundamental question in this suit is whether the acts upon which the courts below relied as establishing sovereignty over Cook Inlet were legally sufficient.

The issue framed in terms of the contentions of the Government is simple, and Alaska believes, easily answered. The Government points out, and correctly so,

that most of the enforcement activities and arrests in Cook Inlet involved American citizens. Hence the Government argues that

> ". . . neither the internal governmental regulations of the United States and the States nor actions pursuant to them against American citizens can be relied upon as exercises of sovereignty. Only actual enforcement actions directed against foreign citizens or foreign governments can be considered in this regard." (Pet. Br. p. 35)

The Government's argument is insufficient and faulty in several respects.

First, the document upon which both parties and the Courts rely, the *Juridical Regime* imposes no such requirement. To the contrary, the text writers in that document universally agree that there is no inflexible rule as to what acts constitute sovereignty. Hence one writer, Gidel, in discussing the acts by which authority is exercised, stated:

> "It is hard to specify categorically what kind of acts of appropriation constitute sufficient evidence: the exclusion from these areas of foreign vessels or their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. *It would, however, be too strict to insist that only such acts constitute evidence.* In the Grisbadarna dispute between Sweden and Norway, the judgment of 23 October 1909 mentions that 'Sweden has performed various acts . . . owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea,

> and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more than she was performing her duty.' " *Juridical Regime* 89. (Emphasis supplied)

The following answer by Norway in the Fisheries case (*United Kingdom v. Norway,* Judgment of 18 December, 1951) to the question of how sovereignty is asserted was quoted with approval by the authors of the *Juridical Regime:*

> "Above all, by action under municipal law (laws, regulations, administrative measures, judicial decisions, etc.)" *Juridical Regime* 93.

Bourquin, another writer, agreed and stated:

> "What acts under municipal law can be cited as expressing its desire to act as the sovereign? That is a matter very difficult, if not impossible, to determine *a priori.* There are some acts which are manifestly not open to any misunderstanding in this regard. The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign." *Juridical Regime* 90.

A careful review of the *Juridical Regime* discloses only one inflexible requirement for sovereignty—that the exercise of sovereignty be effective. The *Juridical Regime* states:

> "On this point there is full agreement in theory and practice. Bourquin expresses the general opinion in these words:

> 'Sovereignty must be effectively exercised; the intent of the State must be expressed by deeds and not merely by proclamations.'
>
> This does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that those laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that to extent that actions on the part of the State and its organs are necessary to maintain authority over the area, such action was undertaken." *Juridical Regime* 98-99.

Clearly Alaska's evidence meets the test set forth in the above-quoted portions of the *Juridical Regime,* an authority admitted by the United States to be controlling in this case. This is true for the following reasons.

First, consistent with the requirement that sovereignty must be effectively exercised, the courts below acted properly in taking into account the absence of foreign vessels in Cook Inlet over the period of time involved. It goes without saying that enforcement activity in Cook Inlet cannot be undertaken against vessels unless they intruded therein. The courts below also properly relied upon the testimony of law enforcement officers who testified that, had they discovered foreign fishing or trespassing in Cook Inlet, they would have acted in such a way as to maintain effective authority over Cook Inlet. (For example, see Roberts' Testimony, A. 74-77; Tr. 315-320)

Second, the Government's argument is invalid because it overlooks the undisputed evidence that there was indeed enforcement activity and the exercise of United

States and Alaskan sovereignty against foreigners and foreign nations. Thus:

(1) Sovereignty was exercised against Japanese fishermen through the seizure of the BANSHU MARU and the subsequent agreement.

(2) The Gharrett-Scudder line was submitted to Canada—a line clearly including Cook Inlet landward of the baseline for determining the three-mile limit disclosed on the charts.

(3) The publication and distribution of federal laws and regulations banning aliens from fishing in Cook Inlet.

(4) The openness, notoriety and continuity of both federal and state patrols that had continued uninterruptedly since 1906 and before, and since the creation of the Southwestern Alaska Fisheries Reservation in 1922.

In face of the above, the Government overlooks the complete absence of any type of protest (except the repudiated Japanese note, p. 38, *supra)* by any foreign nation against the continued exercise of sovereignty over Cook Inlet. Summarizing, the lower court resolved the factual issues and then properly applied the principles of law established by prior decisions of this Court.

PART TWO

CONTINUITY OF EXERCISE OF SOVEREIGNTY

A. FACTUAL FINDINGS

The first 85 Findings of Fact by the District Court dealt in the main with exercise of sovereignty. The next 6 Findings went to the issue of continuity, illustrative of which is Finding 86.

"The exercise of sovereignty over Cook Inlet, the nature of which is indicated in the foregoing Findings, has continued for such period of time as to have developed into a usage. (Record as a whole)"

The Government agrees with these findings and accordingly, in its brief there is, with one exception, no significant comment on any alleged lack of continuity. Apparently the Government is conceding that if sovereignty was in fact exercised, it was sufficiently continuous to have developed into a usage.

The one exception is the Government's contention that continuity was "interrupted . . . by the periodic incursions of foreign vessels who fished unmolested in Cook Inlet." (Govt. brief pp. 25-26) We have already dealt with this contention and the uncontradicted findings of the lower court to the contrary.

One further observation may be in order. Alaska presented the testimony of two eminent and qualified historians, DeArmond and Hunt, who are completely ignored in the Government's brief. Dr. William Hunt, then Chairman of the History Department of the University of Alaska, after having qualified as an expert witness, testified as follows:

"Q. Now, based on your training, experience, and those studies, do you have an opinion as to whether or not there has been a historical exercise of authority over Cook Inlet by those people who have inhabited its shores?
A. Yes, sir, I have.
Q. What is that opinion?

* * *

The Witness: Sir, my opinion is that there has been a historical exercise of control over Cook Inlet and its shores.

Q. Do you have an opinion, Dr. Hunt, based upon your training, experience, and those studies as to whether from a historical standpoint there has been such continuity of this exercise of authority as to have developed into a usage?
A. Yes, sir.
Q. What is that opinion, sir?
A. I believe there has been such a continued exercise of authority as to have ripened into a usage." (A. 98; Tr. 479-483)

He proceeded at length to give factual reasons in support of these conclusions. (A. 98-113; Tr. 483-508) Similar testimony was given by Robert DeArmond, an equally renowned expert on Alaska's history. (A. 113-134; Tr. 520-560)

B. LEGAL PRINCIPLES WITH REGARD TO CONTINUITY

Alaska's evidence on usage and the District Court's findings based thereon meet the legal test imposed to establish continuity. The *Juridical Regime* requires that the "exercise of authority [must be] continued for times sufficient to confer upon it the quality of usage, . . ." *Juridical Regime* 100. While it is clear that no precise length of time is necessary to create a usage upon which historic title is based, "the State must have kept up its exercise of sovereignty over the area for a considerable time." *Juridical Regime* 103.

Applying this principle to the facts at hand, the Court held, as demonstrated by the evidence summarized above, that the exercise of authority over lower Cook Inlet "has existed without interruption from 1906 and very possibly earlier, until the time this dispute arose." (Op. p. 10; Pet. App. B, p. 17a)

PART THREE

FOREIGN NATIONS HAVE ACQUIESCED IN THE EXERCISE OF SOVEREIGNTY

A. FACTUAL FINDINGS

The District Court made eleven Findings dealing with attitude of foreign nations with respect to the exercise of sovereignty over the disputed area of Cook Inlet. (Findings 92-102, incl.; Pet. App. C, pp. 43a-45a, incl.) Typical of these findings are:

> "Foreign nations have tolerated and acquiesced in such exercise of sovereignty over Cook Inlet. (Finding 92; Pet. App. C, p. 43a)
>
> * * *
>
> "Canada, the foreign nation which would be one of the most keenly interested countries in the status of Cook Inlet, accepted the placement of the Gharrett-Scudder line, hereinabove mentioned. (Terry's Depos. p. 13; Findings 58-63; Finding 95; Pet. App. C, p. 43a)
>
> * * *
>
> "The exercise of authority over Cook Inlet by persons and states who controlled its shores has been notorious and well documented over a period of more than sixty-six years. (DeArmond's testimony, Tr. pp. 520-570) (Finding 97; Pet. App. C, p. 43a)
>
> * * *
>
> "The openness and notoriety of the claim over the disputed waters of Cook Inlet were such that all foreign nations knew or should have known of the claim. (Finding 98; Pet. App. C, p. 44a)
>
> Since the arrest of the BANSHU MARU there have been intrusions into other waters off the Alaskan coast by Japanese, Soviet, Korean and Canadian vessels; nevertheless, there have been no such documented intrusions into lower Cook Inlet, except as noted hereunder in Finding 100. (Gov. Egan's testimony, Tr. pp. 732, 746; Exhibits 118, EB) (Finding 99; Pet. App. C, p. 44a)
>
> * * *
>
> "The infrequent and isolated nature of Canadians—no other foreigners—fishing within the waters of Cook Inlet reinforces the view that Cook Inlet has been recognized by foreign nations as inland waters of Alaska and the United States." (Finding 102, Pet. App. C, p. 45a)

In addition to the foregoing, the District Court considered other factors which reinforce its finding that the presence of a few Canadian halibut vessels was not controlling on the status of Cook Inlet as a historic bay. First, the Court recognized that historic title to the disputed area had already ripened. Since most of the intrusions took place after the commencement of this suit and by that time the United States had engaged in the activity described in the Findings, the Court was clearly correct in deciding that historic title to Cook Inlet has already ripened in the United States and Alaska.

Second, the evidence showed and the Court found that in the event of a real challenge to American fishery jurisdiction in the disputed area, such as foreign fishing for salmon, the United States would have been quick to take enforcement action. (Finding 101, Pet. App. C, p. 44a; Baltzo testimony A. 24-25; Tr. 185-187)

Third, the Court found on the basis of undisputed evidence that there existed traditional ties of friendship be-

tween the United States and Canada. This factor, which is closely related to that of consent, recognized the past close relations between the two countries.[24] As an example of the close relationship existing between Canada and the United States, the District Court referred to the 1970 United States-Canada Reciprocal Fishing Agreement.[25] (State Ex. R; Tr. 404)

B. LEGAL PRINCIPLES PERTAINING TO THE ISSUE OF ACQUIESCENCE

The attitude of foreign nations, the last of the three factors to be considered in determining whether a nation has acquired historic title to a maritime area, has been described both as "acquiescence" and "toleration." *Juridical Regime* 106 and 109. For purposes of this case the distinction between the two terms is unimportant[26] since the lower court applied the higher standard and found that "the community of nations has acquiesced in the emergence of historic title of lower Cook Inlet." (Op. p. 11); Pet. App. B, p. 18a)[26a] The *Juridical Regime* quotes with approval an expert in the international law of bays,

24. An indication of this attitude is a letter from the Warden of the Bureau of Fisheries, Ketchikan Office, to the Bureau in Juneau, dated August 8, 1937, wherein the Warden wrote: "Release boats Stop Our policy to be lenient with Canadian boats fishing halibut close to boundary." (State Ex. DZ; Tr. 405)

25. That agreement was merely one in a long line of agreements between the United States and Canada dating back to 1782. (State Ex. BY; Tr. 402)

26. In discussing the distinction between toleration and acquiescence, *Juridical Regime* notes: "If acquiescence is a form of consent, acquiescence would amount to *recognition* of the sovereignty of the coastal state over the area in question and reliance on a historic title would be superfluous." *Juridical Regime* 107.

26a. Assuming that actions speak louder than words, the conclusion is inescapable that Japan has acquiesced in the claim to Cook Inlet.

Bourquin, who supports the theory that the attitude required of foreign nations is that of acquiescence:[27]

> "In such cases the question to be asked is not whether the other States consented to the claims of the coastal State but whether they interfered with the action of that State to the point of divesting of the two conditions required for the formation of an historic title.
> Obviously only acts of opposition can have that effect. So long as the behavior of the riparian State cause no protest abroad, the exercise of sovereignty continues unimpeded . . .
> The absence of any reaction by foreign States is sufficient." *Juridical Regime* 109.[28]

The Government's principal argument on the issue of acquiescence is that the claims of the United States and Alaska to Cook Inlet were not open and notorious. If, as the Government contends, the claims were not open and notorious, the Government reasons there was no opportunity for the nation affected to oppose the claims. The Government's argument is easily answered on several grounds. First, the District Court found that the claims upon Cook Inlet were open and notorious. (Finding 98;

27. The Government recognizes that the Courts below applied the standard of acquiescence. In circuituous reasoning however, the Government argues that the application of that standard by the Courts was meaningless since the acts upon which they relied as establishing sovereignty were legally insufficient. Since, as demonstrated in the earlier portions of this brief, the evidence clearly discloses an exercise of sovereignty, the only conclusion to draw from the Government's argument is that the Courts' application of the law with respect to acquiescence was correct.

28. This precedent has been recognized in cases of other historic bays in the United States. Thus Long Island Sound has been claimed as an historic bay by the United States with no apparent affirmative consent by foreign states. (Hodgson's Depos. pp. 54-56; A. 324-325)

Pet. App. C, p. 44a) This finding is clearly supported by the evidence discussed above, particularly with reference to Canada and Japan.

Second, all that is required with respect to the claim is that it be open and public. The *Juridical Regime* states:

> "It may be argued that if a State had a real interest in a maritime area, it would be natural for that State to follow closely what was going on there and that the fact that the State was unaware of the situation was a good indication that its interest in the area was slight or non-existent . . .
>
> In conclusion therefore, there seems to be strong reason to hold that notoriety of the exercise of sovereignty, in other words, open and public exercise of sovereignty, is required rather than actual knowledge by the foreign state of the activities of the coastal state in that area." *Juridical Regime* 129-130.

Against this background, the Government's argument will not stand up. The Court decision, statutes, regulations, proclamations, patrols, arrests and boardings were open and public. The transmission of the Gharrett-Scudder line to Canada was in addition, actual notice to Canada of the claim.[29]

---

29. In applying the concept of acquiescence it is clear that an opposing nation must maintain its opposition to historic bay claim so long as the sovereignty of the claiming nation persists. A corollary to this rule is that in the face of continuing sovereignty, a simple and single protest such as the Japanese note, will not suffice. *Juridical Regime* 112-115. Moreover, to prevent the ripening of historic title, the opposing nation must have effectively expressed its opposition at the time the exercise of sovereignty became open and notorious. These principles have been approved by this Court in *United States v. California*, 381 U.S. 139, 172 (1965) and in *United States v. Louisiana*, 394 U.S. 11, 23 (1969).

Applying the foregoing principles to this case it is clear that the only conclusion available to the lower courts is the one they drew—that foreign nations have acquiesced in the United States' and Alaska's claims to Cook Inlet.

PART FOUR

ALL OF COOK INLET IS INLAND WATER —NOT TERRITORIAL SEA

In apparent recognition of the fact that Alaska proved clear beyond doubt that sovereignty was exercised over Cook Inlet for a sufficient period of time with the acquiescence of foreign nations, the Government retreats to its last and manifestly weak line of defense. The Government argues that at the most, Alaska proved Cook Inlet to be historic territorial sea rather than historic inland waters. As we understand it the Government's sole authority is a footnote reference by this Court in *Louisiana*, 394 U.S. at 24, n.28 to a quoted portion of the *Juridical Regime*.

> "Historic title can be obtained over territorial as well as inland waters, depending on the kind of jurisdiction exercised over the area. 'If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea.' *Juridical Regime of Historic Waters, Including Historic Bays, supra*, n.27, at 23."

It is Alaska's contention that this portion of the *Juridical Regime*, as quoted by this Court, is taken out of context by the Government and has no reference to Cook Inlet. In *Louisiana*, this Court also said:

> "Whether particular waters are inland has depended on historical as well as geographical factors. Certain shoreline configurations have been deemed to confine bodies of water, such as bays, which are necessarily inland. But it has also been recognized *that other areas of water closely connected to the shore,* although they do not meet any precise geographical test, may have achieved the status of inland waters by the manner in which they have been treated by the coastal nation." 394 U.S. at 23. (Emphasis added)

In the *Juridical Regime,* we find the following statement which seems more applicable to the waters of Cook Inlet:

> ". . . the dominant opinion, as gathered from the statements assembled in the memorandum [*Historic Bays,* Memorandum by the Secretariat to the United Nations, Document A/Conf. 13/1] (Exhibit 52), seems to be that 'historic bays' the coasts of which belong to a single state are internal waters. This was to be expected considering that it is generally agreed that the waters inside the closing line of the bay are internal waters and that the territorial sea begins outside that line."
>
> (Par. 163, *Juridical Regime of Historic Waters, Including Historic Bays*)

And in the memorandum, *Historic Bays,* there is the following statement:

> "It is always necessary to remember in dealing with 'historic waters', the essential point that those waters are internal waters. This fact explains many aspects which would be otherwise difficult to grasp. The theory was originally evolved to apply to 'bays', and is still referred to as the theory of 'historic bays' because it was never envisaged that it might apply except in areas which, by reason of their configuration, are generally not used as major international routes of transit." P. 117, *Historic Bays,* Memorandum by the Secretariat to the United Nations, Document A/Conf. 13/1.

In the light of these international authorities it must be remembered that Article 7 of the Convention on the Territorial Sea and Contiguous Zone, prescribes rules solely for the purpose of defining the baseline for the measurement of territorial sea from a line drawn across the mouths of or within bays. Waters inside the defined line are inland waters. Accordingly, the only sensible meaning of Section 6 of Article 7 (the exception of historic bays) is that a baseline drawn across the bay's entrance points (more than 24 miles apart) also encloses inland waters, where the bay's geographical characteristics otherwise meet the requirements of Article 7 (the semi-circle test, etc.).

This Court's footnote reference to historic territorial seas, relied upon by the Government here, must have had application to "other areas of water closely connected to the shore" but not to "necessarily inland" waters. Such other waters could be straits or open seas and as to these a nation could conceivably have acquiesced title to them as historic territorial seas or even as historic inland waters. Such is not the case of Cook Inlet when its "historical as well as geographical factors" are taken into account. *Louisana Boundary* case, 394 U.S. at 23.

Further, a careful examination of the *Juridical Regime* will disclose no such requirement that historical inland bays can be established only by denying innocent passage to foreign vessels. Both the *Juridical Regime* and its predecessor, *Historic Bays,* Memorandum by the Secretariat to

the United Nations, Document A/Conf. 13/1 (State Ex. 52, Tr. 99), speak in terms of the type of acts required to manifest sovereignty over inland waters. Each treatise declines to denote one specifically required act of sovereignty.[30]

The Government states that "the record shows that foreign vessels were permitted to transit and stop in the disputed area of lower Cook Inlet, and indeed foreign vessels fished there at various times since the early 1940's without hindrance." (Govt. brief p. 24) The record shows no such thing and the Government, it is interesting to note, has cited no part of the record in support of the above-quoted statement.[31] All of the evidence is to the contrary.[32]

---

30. In *United States v. Louisiana*, 394 U.S. 11, 17-35 (1969), this Court, following the principles of the *Juridical Regime*, found that the placement of an inland water line used for regulation of navigation along Louisiana's coast did not constitute sovereignty over inland waters. The Court did not state, as the Government would seem to require, that interference with the right of innocent passage is a fact which must be proved to support a claim of historic inland waters.

31. The Government's failure may possibly be explained by what happened in the Court of Appeals. In its brief there, the Government did cite portions of the testimony in support of a similar statement. We were able to demonstrate successfully, we believe, that the referenced testimony did not support the Government but proved Alaska's contentions. (Res. Br. in Opp., App. B, pp. 3B through 4B)

32. (1) Testimony of O'Dale who from 1901 to at least 1910 operated vessels and prospected in the Cook Inlet area. (A. 455-456) (2) Testimony of Studdert, Fishing Warden in Cook Inlet for two years including the year 1924, for the U. S. Bureau of Fisheries. (A. 545) (3) Testimony of Branson who from 1951 through 1953 was Alaska Enforcement Agent for the Cook Inlet District, Bureau of Commercial Fisheries. (A. 232) (4) Testimony of Wilson, Fisheries Management Enforcement Officer in Cook Inlet from 1955 through 1962. (A. 602) (5) Testimony of Skerry, Agent in Charge of the Cook Inlet District for the Bureau of Commercial Fisheries from 1955 through August, 1959. (A. 507)

We may concede, although the record is largely silent on the point, that Anchorage is and has been for many years the largest seaport in the State of Alaska and that foreign vessels can only reach Anchorage by passing through the waters of Cook Inlet. But this proves nothing, inasmuch as the interests of free international commerce have brought about an international custom that permits foreign vessels to travel across inland waters en route to harbors and ports. So the presence of a few foreign shipping vessels in Cook Inlet would constitute no more evidence that Cook Inlet is territorial sea than the presence of a thousand foreign shipping vessels in San Francisco Bay is evidence that San Francisco Bay is territorial sea. The presence of any foreign vessel in Cook Inlet is adequately explained by Colombos, *The International Law of the Sea* (6th Rev. Ed., (1967) pp. 87-88) wherein he stated:

> "Interior or national waters, on the other hand, consist of a state's harbours, ports and roadsteads and its internal gulfs and bays, straits, lakes and rivers. In these waters, apart from special conventions, foreign states cannot, as a matter of strict law, demand any rights for their vessels or subjects, although for reasons based on the interests of international commerce and navigation, it may be asserted that an international custom has grown in modern times that access of foreign vessels to these waters should not be refused except on compelling national grounds." See also *Award of the Tribunal*, North Atlantic Coast Fisheries Arbitration, September 7, 1910 (State Ex. S, p. 91; Tr. 382)

PART FIVE

THE COURTS CORRECTLY APPLIED THE PROPER STANDARD OF PROOF FOR THE ESTABLISHMENT OF THE ELEMENTS OF COOK INLET'S STATUS AS AN HISTORIC BAY

A. THE DISCLAIMERS

The Government, still clinging to its argument that the State failed to prove sovereignty over Cook Inlet—an argument with which we have dealt—would have this Court reverse the decision of the courts below because proper effect was not allegedly given to so-called disclaimers of historic title. The Government's position fails to take into account three factors, each of which independently proves the correctness of the lower court's decision.

Let us first consider exactly what the District Court did. In recognition of the Government's argument that a disclaimer would be decisive in cases where the historic evidence is not clear beyond doubt, the District Court said:

> "The final qualification concerns the quantum of proof required for a showing of historic title. The expression 'clear beyond doubt', as it first appeared in *United States v. California,* 381 U.S., at 175, could very well not have been intended by the Supreme Court to establish such a high standard of proof in all cases. The context in which that phrase appeared pertained to the legal effect of a disclaimer by the United States in the face of questionable evidence of historic title. The context of this case is clearly distinguishable. Further, there is other language in

> that case[33] which implies that no rigorous standard of proof is required to prove historic title. 381 U.S., at 174. Nor do the long respected commentators of international law appear to require a rigorous standard of proof. *Juridical Regime* 158. Despite this uncertainty over the burden of proof, this Court will adhere to the higher standard of proof, for the reason the Court finds the State of Alaska has satisfied the requirements for establishment of historic title even under the more rigorous standard." (P. 6, Opinion; Pet. App. B, p. 13a)

The line to be drawn between proof, on the one hand, that meets the preponderance standard, and proof, on the other hand, that attains the higher standard, is a line that is difficult to draw. In any event, the task of evaluating the evidence and of determining whether it meets the required degree of proof is necessarily the responsibility of the trial judge in the first instance. Here the Court could have, and with good reason, repudiated the higher standard. Instead, it accepted the Federal Government's position and imposed upon Alaska the burden of proving its case clear beyond doubt. We do not believe that this Court can or should ignore the findings of the Courts below in the absence of a finding that they are clearly erroneous. (Rule 52(a) Federal Rules of Civil Procedure).[34]

---

33. The District Court was referring to the following language: ". . . it is said that the Special Master erroneously thought the concept of historic waters to be an exception to the general rule of inland waters requiring a rigorous standard of truth. We find no substantial indication of this in his report, *U. S. v. California,* 394 U.S. 139, 174 (1965).

34. In applying the "clearly erroneous" rule, the courts have reached the same conclusion where issues must be proved by "clear and convincing evidence." In *Re Mollans Estate,* 181 Minn. 217, 232 N.W. (1930), *Taylor v. Bunnell,* 133 Cal. App. 177, 23 P.2d 1062 (1933), *Christiansen v. Strand,* 81 S.D. 187, 130 N.W.2d 286 (1965).

B. FOREIGN RELATIONS

This brings us to a fundamental point—one consistently ignored by the Government. Its brief is replete with arguments that this case involves matters of foreign policy. The District Court was not unmindful of this argument and indeed recognized "that the conduct of foreign relations is constitutionally vested within the exclusive control of the Executive and Legislative Branches of the United States Government." (Concl. of Law 21, Pet. App. C, p. 52a) But the lower court also recognized that "courts have traditionally exercised jurisdiction to resolve fundamental law questions and basic fact issues between state and federal governments." (Concl. of Law 22, Pet. App. C, p. 52a) So the Federal Government's argument of exclusivity over foreign relations obviously does not lead to an abandonment of this Court's obligation to determine, as between the National Government and the State Government, the ownership of the mineral resources in Cook Inlet. Nor does it follow that all standards of appellate review are to be cast aside.

To the contrary, this Court in *Louisiana,* 394 U.S. at 77, held that the National Government cannot so distort its power over foreign relations as to deny the effect of past events and thereby reach an impermissible contraction of state territory.[35] A previous caution to like

35. "[I]t would be inequitable in adapting the principles of international law to the resolution of a domestic controversy, to permit the National Government to distort those principles, in the name of its power over foreign relations and external affairs, by denying any effect of past events.

In a footnote to that excerpt, the Court further limited the legal effect of a disclaimer:

> It is one thing to say that the United States should not be required to take the novel, affirmative step of adding to its territory by drawing straight baselines. It would be quite another to allow the United States to prevent recognition of a historic title which may already have ripened because of *past* events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in *United States v. California.* Id."

effect had been sounded by the Court in *California,* 381 U.S. at 168.[36] The disclaimers, if they rise to the level of exercises of control over foreign relations, were all written after the occurrence of such past events as (1) the enactment and enforcement of federal legislation and regulations, protecting the fisheries of Alaska for American citizens; (2) the transmittal to and acceptance by the Canadian Government of the Gharrett-Scudder charts; (3) the seizure of the Japanese vessels, the State Department's subsequent repudiation of the Japanese protest, and the Japanese continuous adherence to date to its promise not to fish again in the waters of Cook Inlet.

It would be ironic and manifestly unfair indeed if Alaska would now, after more than 60 years of continuous sovereignty, lose Cook Inlet, its fisheries and its minerals, because one federal lawyer in one federal agency opined to another federal lawyer in another federal agency that the waters of Cook Inlet were and are high seas.

36. And in *United States v. California*, 381 U.S. at 168, the Court reasoned:

> "The national responsibility for conducting our international relations obviously must be accommodated with the legitimate interests of the States in the territory over which they are sovereign. Thus a contraction of a State's recognized territory imposed by the Federal Government in the name of foreign policy would be highly questionable."

CONCLUSION

For the reasons discussed above, the judgments of the District Court and the Court of Appeals should be affirmed.

Respectfully submitted,

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March, 1975

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing BRIEF OF THE STATE OF ALASKA, RESPONDENT, has been forwarded to counsel for Petitioner, Robert H. Bork, Solicitor General; Wallace H. Johnson, Assistant Attorney General; A. Raymond Randolph, Jr., Deputy Solicitor General; Gerald P. Norton, Assistant to the Solicitor General, Office of the Solicitor General, Department of Justice, Washington, D. C. 20530, and to Mr. Bruce C. Rashkow, Attorney, Department of Justice and Edward F. Bradley, Attorney, Department of Justice, Washington, D.C. 20530 this _____ day of March, 1975, by placing the same in the United States mail, correctly addressed and stamped.

THOMAS M. PHILLIPS
Attorney for Respondent
State of Alaska

Supreme Court, U. S.
FILED
APR 11 1975
MICHAEL RODAK, JR., CLERK

No. 73-1888

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, PETITIONER

v.

STATE OF ALASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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Washington, D.C. 20530.

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In view of Alaska's comments regarding our acceptance of the findings of fact of the district court (*e.g.*, Resp. Br. 2, 8, 10–11, 44, 47), we must emphasize again our position in this regard. We do not quarrel with findings that, for example, particular events did or did not occur. We do take issue, however, with the legal significance and characterization of events that undisputably occurred. That the district court included many of its ultimate legal conclusions in its "Findings of Fact" does not transform these into factual findings and does not mean that the Court must accept their legal significance under a "clearly erroneous"

standard (Fed. R. Civ. P. 52(a)). Regardless of their characterization by the courts below, the issues before the Court are legal, not factual, in nature. To those issues we now turn.

A. THE FACTS RELIED UPON BY ALASKA DO NOT CONSTITUTE LEGALLY SUFFICIENT OR EFFECTIVE EXERCISES OF SOVEREIGNTY

1. Alaska contends that the United States has made "explicit claims to Cook Inlet" (Resp. Br. 8) "as an historic inland bay * * *" (*id.* at 10). If this is meant to suggest that the United States has expressly declared to other nations that we regard Cook Inlet as historic inland waters, then it is not accurate. The United States has never made such a claim; to the contrary, it has repeatedly disavowed any such claim (see U.S. Br. 19–20).

2. Beyond this, Alaska stresses certain geographic features of Cook Inlet (Resp. Br. 15–17), but omits to mention one of the most significant ones—its size. As noted by Jessup, "the size of the body of water * * * operates as a factor in hindering international acquiescence." Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* 412 (1927). Cook Inlet is 47 miles wide at the headlands, as wide as 60 miles in some portions, and about 220 miles long.[1] It is an

[1] If "a mariner instinctively feels himself within the jurisdiction and domain of Alaska" (Resp. Br. 16), it is in part because of the mountains along the shores of Cook Inlet, which tend to diminish its immense breadth.

enormous body of water,[2] a fact that may be obscured somewhat by the vast size of Alaska itself. If Cook Inlet were an historic bay, it would be, by a substantial margin, one of the largest ever claimed and perhaps the largest ever recognized.[3] In light of its size, the omission of Cook Inlet from listings of historic waters (see U.S. Br. 52, n. 58) could hardly have been an oversight. Moreover, in view of the size limitations on juridical bays and the general principles of freedom of the seas, it is particularly important in regard to such a large body of water that the coastal nations have clearly exercised sovereignty *as over inland waters*.[4]

[2] Cook Inlet is larger than the Great Salt Lake and Lake Ontario, and about the same size as Lake Erie. It also dwarfs Chesapeake Bay, Delaware Bay, and Long Island Sound, which the United States had claimed as historic bays.

[3] Descriptions of historic waters that have been claimed or recognized are found in the United Nations memorandum, *Historic Bays* (A. 693–698), and Jessup, *supra*, 383–439.

[4] There is nothing to support Alaska's argument that the correlation recognized by this Court and the *Juridical Regime* between the type of sovereignty exercised and the nature of the resulting historic title (see U.S. Br. 36–37) applies only to "straits or open seas" and not to "bays" (Resp. Br. 53). In recognizing a distinction between "historic bays" and other "historic waters" (¶ 165), the *Juridical Regime*, while acknowledging that most historic bays have been regarded as internal waters, expressly stated that as to both historic bays and other historic waters, the nature of the sovereignty exercised and acquiesced in governs the title acquired. Moreover, Alaska ignores entirely the Gulf of Fonseca in Central America, a small bay-shaped historic *territorial* sea at the western end of Nicaragua (see U.S. Br. 37, n. 37).

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3. Recognizing the necessity of some exercise of sovereignty over Cook Inlet directed against foreign nationals,[5] Alaska also claims that "[o]ne of the United States' most significant assertions of authority over all of Cook Inlet took place in 1957 and 1958 when [by transmitting the Gharrett-Scudder maps] the United States communicated to Canada, in a classic manner, its claim to Cook Inlet" (Resp. Br. 34; see *id* at 43). The Gharrett-Scudder maps merely delineated the portions of the high seas in which the United States was enforcing certain salmon fishing regulations against persons and vessels subject to United States jurisdiction.[6] The record belies any

[5] The authorities cited by Alaska (Resp. Br. 40–42) acknowledge that the most relevant assertions of sovereignty are actions directed against foreign nationals. Alaska omits the important qualification to Bourquin's view that other acts (*e.g.*, the placing of beacons) present "borderline" cases in which the significance of the act depends upon other circumstances (A. 742). Similarly, the *Juridical Regime* (¶ 94) notes the view that while action by a state under its municipal law is "essential" it is "not in itself sufficient to establish the title * * *" (A. 742). This is consistent with our view, for if a state treats waters as inland waters by enforcing its laws against foreign nationals, enforcement of its laws there against its citizens as well would logically if not inevitably follow, while the failure of a state to regulate as to its citizens with respect to assertedly inland waters would tend to undercut any claim that the waters were part of the territory of the coastal nation. In short, actions against foreign nationals constitute the *sine qua non* of a non-explicit claim of historic title, absent which there is no basis for concluding that other nations have acquiesced in an assertion of sovereignty.

[6] The Gharrett-Scudder maps derived from a joint United States-Canadian enforcement effort to regulate salmon fishing in the high seas. Pursuant to international agreement, implemented by the North Pacific Fisheries Act of 1954, 68 Stat. 698, as amended, 16 U.S.C. 1021, *et seq.*, in 1956 the United States prohibited certain salmon fishing by persons or vessels subject to the jurisdiction of the United States within specified areas seaward of "the waters of Alaska" as delineated by lines connecting the headlands of all bays. 21 Fed. Reg. 5446–5447, 50 C.F.R. (1957 ed.) 101.19 and part 130. Agreeable in principle to the United States' intention to use "the waters of Alaska" so defined as the basis for enforcement efforts against persons subject the United States' jurisdiction, the Canadian representatives at a joint conference wished to see a chart showing more definitely those waters (A. 1127). Accordingly, Interior Department employees Gharrett and Scudder prepared charts depicting the boundaries of "the waters of Alaska" as defined in the salmon fishing regulations.

[7] The lines shown were developed primarily to promote fisheries purposes, as viewed by the Interior Department staff responsible for Alaska commercial fisheries, and "interpretation of international waters was not a primary concern" (A. 834, 1038; see A. 294–295, 589). The definition of the "waters of Alaska" adopted in 1956 with reference to salmon fishing in the North Pacific was in 1957 used generally in the Alaska fisheries regulations (see U.S. Br. 15–16, n. 18).

suggestion that those maps were intended by the United States, or perceived by Canada, as an internationally-significant assertion of sovereignty.

The maps were transmitted by Interior to the State Department with the explicit understanding that the lines shown were "drawn solely for the purpose of fisher[ies] management" and did not bear "any relationship to lines delimiting the territorial waters of the United States" (A. 869; cf. A. 832).[7] In fact, the Gharrett-Scudder maps used straight baselines (see, *e.g.*, chart 8502, following A. 1208), contrary to the well-established foreign relations posture of the

United States (A. 828–829; see, *e.g., United States* v. *California,* 381 U.S. 139, 167–169; *United States* v. *Louisiana,* 394 U.S. 11, 72–73), and they enclosed a number of areas (in addition to Cook Inlet) that the United States and other nations have regarded as international waters, such as Shelikof Strait and other portions of the high seas.

While the letter formally transmitting the Gharrett-Scudder charts to Canada simply described the lines depicted as being the basis of the Alaska salmon fishing regulation (A. 1201), that was not the only communication between the countries on this subject (see A. 871–872, 1036–1037, 1044, 1116–1135). As Gharrett stated, the charts were submitted to Canada "with the explanation that this was the manner in which the regulations applied to U.S. fishermen. *We definitely avoided any reference to International or Territorial waters*" (A. 837; emphasis added). Thus, in no relevant sense did the transmission of the Gharrett-Scudder maps constitute a claim of international sovereignty, and they were submitted in a context (see *supra,* n. 6) that effectively disclaimed any such intentions.

4. With respect to our assertion that foreign vessels were permitted to transit and stop, and to fish, in the disputed portions of lower Cook Inlet (U.S. Br. 13, 44–45), Alaska contends that the record is to the contrary and that such unhindered passage of foreign vessels is of no relevance to its claim that Cook Inlet is inland waters. We deal with the record in the mar-

gin,[8] and focus on the legal significance of such passage.

---

[8] Alaska correctly notes that the portion of our summary of argument it quotes (Resp. Br. 54) contains no record citations. The argument proper, however, contains substantiated discussions of both the deliberate decision of the responsible United States officials not to interfere with foreign fishing in Cook Inlet in 1952 because the vessels were more than three miles from the shore (U.S. Br. 13)—a highly significant incident ignored by Alaska—and of other foreign vessels fishing, navigating or at anchor in Cook Inlet (U.S. Br. 44–45). Such events were testified to by federal fisheries officials (A. 16–17, 21, 232, 262–263, 360–361, 456, 507–508, 545, 602). Of course, not all such witnesses saw foreign vessels actually fishing. Some who did not expressed the personal opinion—years, often decades, after the fact—that if they had seen foreign fishing beyond three miles they would have taken enforcement action. Although Alaska regarded such hypothetical opinions as "irrelevant" in the district court (*e.g.*, A. 265), it now relies heavily upon them (Resp. Br. 24–26, 42, 47). Such after-the-fact speculation is of little relevance or weight when compared to the contemporaneous records of a policy decision against enforcement of the fisheries laws against foreign vessels more than three miles from the shore of Cook Inlet, coupled with acknowledged doubts that Cook Inlet could be regarded as an historic bay (A. 772–773, 802–803).

We are unable to perceive the significance attributed by Alaska to the last two sentences of the memorandum of the Solicitor of the Interior Department concerning the enforceability of the fisheries regulations against foreign vessels fishing more than three miles from the shore of Cook Inlet (Resp. Br. 30–31). If the references in the fisheries laws to "territorial waters" were not "strictly construed," it could only mean that the laws would directly regulate fishing in the high seas—which the United States could do, prior to 1966, only as to its citizens. See 16 U.S.C. 1091, *et seq.* Alaska's attempt to reconcile Day's contemporaneous memorandum with his recollections two decades later (Resp. Br. 25, 30) ignores the explicit recognition in his memorandum that portions of Cook Inlet were "extra-territorial waters (*i.e.*, beyond three miles) * * *" (A. 803).

The *Juridical Regime* explicitly states (¶ 164) that "if the claimant State allowed the innocent passage of foreign ships through the waters claimed, it could not acquire an historic title to these waters as internal waters, only as territorial sea" (A. 751). Alaska suggests that the presence of foreign vessels in Cook Inlet no more bars it from becoming inland waters than the presence of foreign vessels in San Francisco Bay makes it territorial sea (Resp. Br. 55).

A crucial difference, however, is whether the foreign vessels are present as a matter of right (as they could be in the high seas or the territorial sea) or as a matter of sufferance or permission (as they could be only in inland waters). As the proponent of the claim that Cook Inlet is inland waters, Alaska had the burden of proving that foreign vessels were present in Cook Inlet only by permission, whether through explicit authority[9] or perhaps established custom.[10] Yet, Alaska asserts that the record is silent on this point (*ibid.*) on which its case depends. In fact the record is not silent, for it contains numerous indications that foreign vessels were thought to have the right to navigate in Cook Inlet, and even to fish, beyond the three-mile limit (see p. 7, *supra,* n. 8; U.S. Br. 13–14).

[9] Federal regulations require the masters of foreign vessels to give 24 hours advance notice before arriving at any port or place within the navigable waters of the United States. 33 C.F.R. 124.10.

[10] The district court's finding that Cook Inlet "has never been a waterway for intercourse between nations" (Pet. App. 23a) makes it unlikely that the presence of foreign vessels in Cook Inlet, if inland waters, could be explained on the basis of "international custom" (Resp. Br. 55).

B. ALASKA FAILED TO ESTABLISH THE REQUISITE CONTINUITY OF EXERCISE OF INLAND WATER SOVEREIGNTY FOR A CONSIDERABLE PERIOD OF TIME

Even on Alaska's view that regulation of fishing by foreign nationals is a sufficient exercise of sovereignty to establish historic title over Cook Inlet as inland waters, it has failed to establish that such sovereignty has been exercised "continuously" for a "considerable" period of time, as Alaska acknowledges it must do (Resp. Br. 45). Foreign fishing vessels did not indicate much interest in fishing in Cook Inlet until the 1940's and 1950's,[11] during which period the record documents Canadian halibut fishing there. Alaska attempts to brush aside this evidence with the statement that "most of the intrusions took place after the commencement of this suit * * *" (Resp. Br. 47). But this is not accurate.[12]

Alaska also endorses the district court's conclusion that historic title in the United States had already "ripened" before such intrusions (*ibid.*). Although

[11] There is no basis for Alaska's assertion that the limited foreign fishing in Cook Inlet demonstrates the "success" of United States enforcement of its fisheries regulations (Resp. Br. 33), rather than a preference for less remote or more productive fishing areas.

[12] Fully 60 percent of the documented instances of foreign fishing in Cook Inlet occurred at various times between 1943 and the commencement of this suit in 1967 (A. 804–809, 814, 818–820, 823–827). Much of the fishing by Canadian vessels was subsequent to transmission of the Gharrett-Scudder charts to Canada in 1957, indicating that Canadians did not thereafter regard Cook Inlet as inland waters.

Alaska fails to specify when that ripening occurred, it now relies most heavily on the transmission of the Gharrett-Scudder maps in 1957 and the Shelikof Strait seizures in 1962. Quite obviously, if the ripening of historic title cannot be established without those events, the requisite sovereignty had not been exercised for a "considerable" period of time when this suit was begun in 1967.

C. ALASKA FAILED TO ESTABLISH ACQUIESCENCE BY FOREIGN NATIONS IN ANY EXERCISE OF SOVEREIGNTY OVER COOK INLET AS OVER INLAND WATERS

Alaska argues that no foreign nation "has protested the claim to Cook Inlet as an historic inland bay by the United States and Alaska" (Resp. Br. 10; see *id.* at 42). However, because the United States never made such a claim (see p. 2, *supra*), there was no occasion for foreign nations to protest,[13] and, to the extent that Alaska made such a claim in connection with the Shelikof Strait seizures, Japan did protest.[14]

[13] Even if some of the actions taken by the United States could be regarded as equivalent to a claim of Cook Inlet as inland waters, it cannot be said, as Alaska asserts (Resp. Br. 50, n. 29), that *all* such actions were sufficiently "open and notorious" to oblige foreign nations to protest. This is true of domestic statutes and regulations and especially of boardings and arrests of American vessels. The transmission of the Gharrett-Scudder charts—if relevant—could affect no country but Canada, as they were otherwise not made public.

[14] There is no basis for Alaska's assertion that Japan's formal diplomatic protest was ineffective (Resp. Br. 50, n. 29). A single such protest may be sufficient if the circumstances require no more. Here, Japan has had no occasion to take further action. Alaska refers to the adherence of "the Japanese * * * to its [sic] promise not to fish" in Cook Inlet (Resp. Br. 59), but it is clear that the agreement was the unauthorized act of the private Japanese fishermen involved (see U.S. Br. 18), and the absence of subsequent fishing there cannot be said to be or reflect action or inaction of the Japanese government. In any event, the absence of subsequent fishing by Japanese vessels does not negate the protest of the Japanese government (cf. Resp. Br. 48, n. 26a), because acquiescence may be based only on the action (or inaction) of foreign governments (cf. *Juridical Regime* ¶¶ 106–133 (A. 744–747)), not of their citizens, just as sovereignty may be exercised only by governmental action (see U.S. Br. 40).

D. ALASKA DISREGARDS THE PRE-EMINENT POWER OF THE UNITED STATES CONCERNING FOREIGN RELATIONS AND NATIONAL BOUNDARIES AND THE ADVERSE INTERNATIONAL IMPLICATIONS OF THE DECISION BELOW

We agree with Alaska that the United States cannot "distort" its power over foreign relations to ignore past events giving rise to historic title (Resp. Br. 13, 58), but past events are decisive only when it is clear beyond doubt that historic title has already ripened. In other cases, the foreign policy power of the United States is decisive. As we have shown, the evidence supporting Alaska's claim of historic title was hardly "clear beyond doubt" and rejection of that claim here does not distort, but is entirely consistent with, our traditional foreign policy position (see U.S. Br. 33–35).[15] In its foreign relations the United States would

[15] Alaska seems to suggest that the United States' claim of jurisdiction over Long Island Sound is in some way inconsistent with its position concerning Cook Inlet (Resp. Br. 49,

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not acknowledge that historic title to inland waters had accrued on the basis of the evidence comparable to that underlying Alaska's claim (see Pet. App. 67a–72a), and affirmance of the decision below would hinder the United States in resisting expansive territorial claims of other nations based on assertions of historic title.[16]

CONCLUSION

For the reasons stated in the Brief for the United States and in this Reply Brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

APRIL 1975.

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n. 28). There is no inconsistency. Long Island Sound, less than half the size of Cook Inlet, is only five miles wide at its opening to the sea. More than 100 years ago its status as part of the territory of the United States (as it was previously part of the territory of the British Empire) was recognized and asserted, consistently with the frequent, undisputed historical assertions of inland water sovereignty. *Mahler* v. *Norwich & N.Y. Transp. Co.*, 35 N.Y. 352; see *The J. Duffy*, 14 F. 2d 426 (D. Conn.).

[16] Alaska makes no attempt to justify the district court's rejection of the United States' disclaimers of jurisdiction over Cook Inlet as inland waters on the basis of its qualitative assessment of the research underlying them. Rather, Alaska now asserts that the disclaimers should be disregarded, implying that they "were all written after" the State Department's response to the Japanese protest to the Shelikof Strait seizure (Resp. Br. 59). In fact, the first disclaimer was dated May 3, 1962 (A. 755–757; see A. 611)—the date of the Japanese protest (U.S. Br. App. A)—and the United States response was dated June 19, 1962 (A. 1155–1156).

U.S. GOVERNMENT PRINTING OFFICE: 1975

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No. 73-1888

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

On Writ of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF OF THE STATE OF ALASKA, RESPONDENT

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SUPPLEMENTAL BRIEF OF THE STATE OF ALASKA, RESPONDENT

Introductory. The Government's Reply Brief presents a paradox in that it both obscures and illuminates the basic issue. It is therefore deserving of this short, supplemental rejoinder by the State of Alaska.

The Obscurity. In Petitioner's original Brief, we find the unqualified and unequivocal statement: "We accept the findings of fact of the district court." (Pet. Br. p. 35 n. 35). Nowhere did the Government complain that the Findings were too broad or that they were really not Findings of Fact but conclusions. Now it would appear the Government retreats from its original admission, and, without specifying just which Findings it rejects, it claims that some of the Findings include "ultimate legal conclusions" with which it does disagree.

Conceding *arguendo* that some of the District Court's Findings are broadly stated and therefore may contain mixtures of fact and law, Alaska, as well as the Court, are left to wonder just which Findings of Fact the Government accepts and which it rejects. It is also to be noted, in passing, that the Government in seeking a writ of certiorari did not complain that the trial court had improperly stated legal conclusions under the guise of Findings of Fact.

The Government's present approach, we suggest, will set this Court upon a procedure of groping its way through a massive factual record in an attempt to sort out the nuances, details and complexities of factual matters explored by the District Court throughout the course of a lengthy trial — a procedure which is foreign to established appellate review. This serves to re-emphasize the wisdom of leaving to the Fact Finder the primary responsibility for determining the facts. In the final analysis, to do otherwise leaves this Court in a quandary as may be demonstrated below by reference to particular Findings.

Geographic Features of Cook Inlet. The Government makes much of the fact that Alaska omitted mentioning that Cook Inlet was a large body of inland water. If this omission is significant, we suggest it is even more noteworthy that the Government has been unable to find any authority for the proposition that the size of Cook Inlet defeats the emergence of historic title. Alaska recognizes that the uniqueness of Cook Inlet, including its size, does not give rise, standing alone, to historic title. But neither are the geographic features irrelevant. In this connection, the District Court made the following Findings of Fact.

"4. The geographic and economic characteristics of Cook Inlet are such that it would have been unnatural had not the inhabitants of its shores exercised continuous sovereignty over its shores and waters from the earliest times forward, with the acquiescence of foreign nations." (Pet. App. C, p. 22a)

"12. From the beginning of recorded history Cook Inlet has been vital to the economic interest of those persons inhabiting its shore; first the carrying on of the fur trade; from the late 1800's to the present, extensive fishing; and more recently, activity relating to both hard minerals and oil. (See Dr. George Rogers' testimony, Tr. pp. 596-636, and Robert DeArmond's testimony, Tr. pp. 520-570; Dr. William Hunt's testimony, Tr. pp. 474-518; Exhibits GI-HH, IY, IZ, JA, IW)

"13. All of Cook Inlet's waters have been and are such that they have been easily patrolled and protected by the government entity which has controlled its shores. (See Findings 19 through 85 below)

"14. If the United States and the State of Alaska had not controlled the fishing carried on within the disputed area of Cook Inlet, as hereinafter found, there would have been a disastrous effect upon the fish resources in Cook Inlet which had theretofore been exploited by the citizens of the United States and residents of Alaska. The landing law could not and would not have prevented the disaster. (Don Stewart's testimony, Tr. pp. 577-588)

"15. Conversely, the existence and enforcement of such fishing laws were not intended for the benefit of persons living elsewhere, as in Canada, Russia, or Japan. (Rogers' testimony, Tr. pp. 596-636; Stewart's testimony, Tr. pp.

571-596; Ex. AF-1906 Alien Fishing Act; White Act 43 Stat. 464)" (Pet. App. C, p. 24a)

In the Fact-Finding role that presumably the Government would now thrust upon this Court, how would the Government have the Court deal with these Findings. Are the Findings covered by the original statement: "We accept the findings of fact of the district court"? Or by the Government's present position: "We reject those findings which contain ultimate legal conclusions"? And how is this Court to resolve the matter?

Alleged Foreign Findings. To the Government's assertion that foreign vessels were permitted to transit and fish in Lower Cook Inlet, and to the references contained in footnote 8, p. 7, Government's Reply Brief, we would refer this Court to Alaska's Supplemental Brief before the Court of Appeals, pp. 2-5 and its appendix. There we show that foreign vessels were permitted in Cook Inlet only by license or on humanitarian grounds based on safety. As for the so-called Bransen sighting, the evidence is questionable. It is not noted in Exhibits 78 and 80 and could even have been within the admitted territorial sea of Cook Inlet. (Costello Deposition p. 30, A. 263) In weighing this evidence, the Court found against the United States. (Finding 101 Pet. App. C, p. 44a)

Explicit Claim of Jurisdiction Over Cook Inlet. If, as we suggest, the Government has now obscured the basic issue, it has also illuminated it. Alaska has never contended that the United States has made a declaration with the exact words: "We claim Cook Inlet as historic inland waters." The Government's argument, as now set forth in its Reply Brief, is that since the United States has never made such a precise claim, Cook Inlet therefore has not been claimed as a historic inland bay.

Here then we draw for the Court the basic issue that lies at the heart of this case. Alaska contends, *legally*, that the claiming nation need not use the precise words "inland waters" to establish historic title, and *factually* that the United States has nevertheless made explicit claims to Cook Inlet as a historic inland bay.

The Government's Reply Brief again demonstrates its unwillingness or its inability to come to grips with Alaska's basic position. To state or to contend legally that a claiming nation must use the words "we claim X Bay as historic inland waters" is to reveal its absurdity. There has never been such a narrow, strict, unreasonable requirement advanced by any recognized authority. None has been cited and, so far as Alaska is concerned, no such authority can be cited.

So far as the facts are concerned, they are undisputed. With the precedent of the Federal judiciary (the Kodiak Decision), the Executive Branch of the Government, first the Secretary of Commerce and subsequently the Secretary of the Interior, pursuant to Congressional mandate contained in the White Act, promulgated, distributed worldwide, and enforced continuously regulations from 1924 through at least 1957 — a period of 33 years — that defined Cook Inlet as including all adjoining waters north of Cape Douglas and west of Point Gore including the Barren Islands. This was done by these Executives in carrying out the duty imposed upon them in the White Act "to set apart and reserve fishing areas in any of the (Alaskan) waters over which the United States has jurisdiction." Some twelve areas of fisheries districts were defined. Eleven of these districts included the words "territorial coastal waters" of Alaska. (See Exhibit DX IU, 2 App. p. 1171)

Taking note of these particular words, Secretary Udall, in April 1962, stated:

> The reference to waters of the mainland shore and to territorial coastal waters surrounding Kodiak and adjacent islands evidenced the Department's intention to limit its regulatory activities under the White Act to those waters within the three-mile limit recognized as established American law. This language negates any assertion of jurisdiction over the entire waters of the Straits. (PX 98, 2 App. 831)

The point is obvious and it has never been contested by the Federal Government. If the *presence* of the words "territorial coastal waters" in the definition of eleven Alaskan areas limited an assertion of jurisdiction to the traditional three miles from the coast, the *absence* of such words in the description of the twelfth area, Cook Inlet, is as clear an assertion of jurisdiction over all of the waters of Cook Inlet as could possibly be asserted. And this definition, distributed throughout the world, was carried forward year, after year, after year.

A close analogy is found in the adjudication of Chesapeake Bay as a historic bay of the United States. There in a damage suit, in the absence of what the Government would now characterize as an "explicit claim," the Court relied upon a Congressional act defining a revenue district "xx over all the waters, shores, bays, harbors, and inlets comprehended within a line drawn from Cape Henry to

the mouth of the James River." (Stetson v. U.S., EXO (T. 43a)) If by such reasoning, Chesapeake Bay has become a historic inland bay, so by the same reasoning has Cook Inlet.

Respectfully submitted,

CHARLES K. CRANSTON
Attorney for Respondent

THOMAS M. PHILLIPS
Attorney for Respondent

AVRUM GROSS
Attorney General of Alaska

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing SUPPLEMENTAL BRIEF OF THE STATE OF ALASKA, RESPONDENT, has been served upon counsel for Petitioner, Robert H. Bork, Solicitor General; Wallace H. Johnson, Assistant Attorney General; A. Raymond Randolph, Jr., Deputy Solicitor General; Gerald P. Norton, Assistant to the Solicitor General, Office of the Solicitor General, Department of Justice, Washington, D.C. 20530, and upon Mr. Bruce C. Rashkow, Attorney, Department of Justice, and Edward F. Bradley, Attorney, Department of Justice, Washington, D.C. 20530 this 15th day of April, 1975, by hand delivery of the same.

THOMAS M. PHILLIPS
Attorney for Respondent
State of Alaska

8553

UNITED STATES
ALASKA – SOUTH COAST

COOK INLET
NORTHERN PART

Mercator Projection
Scale 1:190,104 at Lat. 61°30'

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

DRIFT RIVER
Scale 1:40,000 at Lat. 60°30'
SOUNDINGS IN FATHOMS
(FATHOMS AND FEET TO ELEVEN FATHOMS)
AT MEAN LOWER LOW WATER

NIKISKI
Scale 1:5,000 at Lat. 60°41'
SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

NIKISKI AND VICINITY
Scale 1:20,000
SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

Beluga Lake
Mt. Spurr
BELUGA RIVER
SUSITNA RIVER
LITTLE SUSITNA RIVER
KNIK ARM
ANCHORAGE
Pt. Campbell
Fire I.
TURNAGAIN ARM
CHICKALOON BAY
Middle Ground Shoal
Moquawkie Indian Reservation
North Foreland
Cook Inlet
Nikiski
Kenai
KENAI RIVER
SKILAK LAKE
Funny River
Killey River
TUSTUMENA LAKE
Beaver Creek
Kasilof Village
Kasilof River
Harriet Pt.
Redoubt Pt.
Tuxedni Bay
Chisik I.
Drift River
Trading Bay
Kalgin I.
Ladd Landing
Polly Creek
Polly
Chuitna River
Beluga River
Susitna River
Little Susitna River
Knik River
Eagle River
Eklutna
Palmer
Wasilla
Big Lake
Willow
Talkeetna
Anchorage
Kenai River
Skilak Lake
Funny River
Killey River
Tustumena Lake
Beaver Creek
Kasilof River
Cook Inlet
Turnagain Arm
Knik Arm
Chickaloon Bay

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The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located.

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ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION
COAST AND GEODETIC SURVEY

(Cook Inlet, Northern Part) C. & G. S. 8553

8554

UNITED STATES
ALASKA - SOUTH COAST

COOK INLET

SOUTHERN PART

Mercator Projection
Scale 1:200,000 at Lat. 60°00'

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

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COOK INLET

NIKOLCHIK HARBOR
Scale 1:5,000 at Lat. 60°02'
SOUNDINGS IN FEET
AT MEAN LOWER LOW WATER

ILIAMNA L.

AUGUSTINE ISLAND

KAMISHAK BAY

CAPE DOUGLAS

KENNEDY ENTRANCE

PENINSULA

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Legend

Base Map (to 1867)

- RUSSIAN SETTLEMENTS
- SIX-MILE CLOSURE

First Overlay (1867-1900)

- TRADING POSTS
- SETTLEMENTS
- FUR FARMS
- MARITIME BOARDINGS
- OVERLAND ROUTES

Second Overlay (1900-1959)

- CANNERIES
- RAILROAD
- MINING ACTIVITY
- OIL DRILLING ACTIVITY
- TEN-MILE CLOSURE
- TWENTY-FOUR MILE CLOSURE

153°00' 152°00' 151°00' 150°00'

61°00'

60°00'

59°00'

154°00' 153°00' 152°00' 151°00' 150°00'

HISTORIC DEVELOPMENT of the COOK INLET BASIN

Scale 1:350,000 at Lat 60°00'

Hydrography based upon USC & GS Chart 8502

EXHIBIT H-V

Legend

Base Map (to 1867)

- RUSSIAN SETTLEMENTS
- SIX-MILE CLOSURE

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- TRADING POSTS
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59°00'

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Scale 1:350,000 at Lat. 60°00'

Hydrography based upon USC & GS Chart 8502

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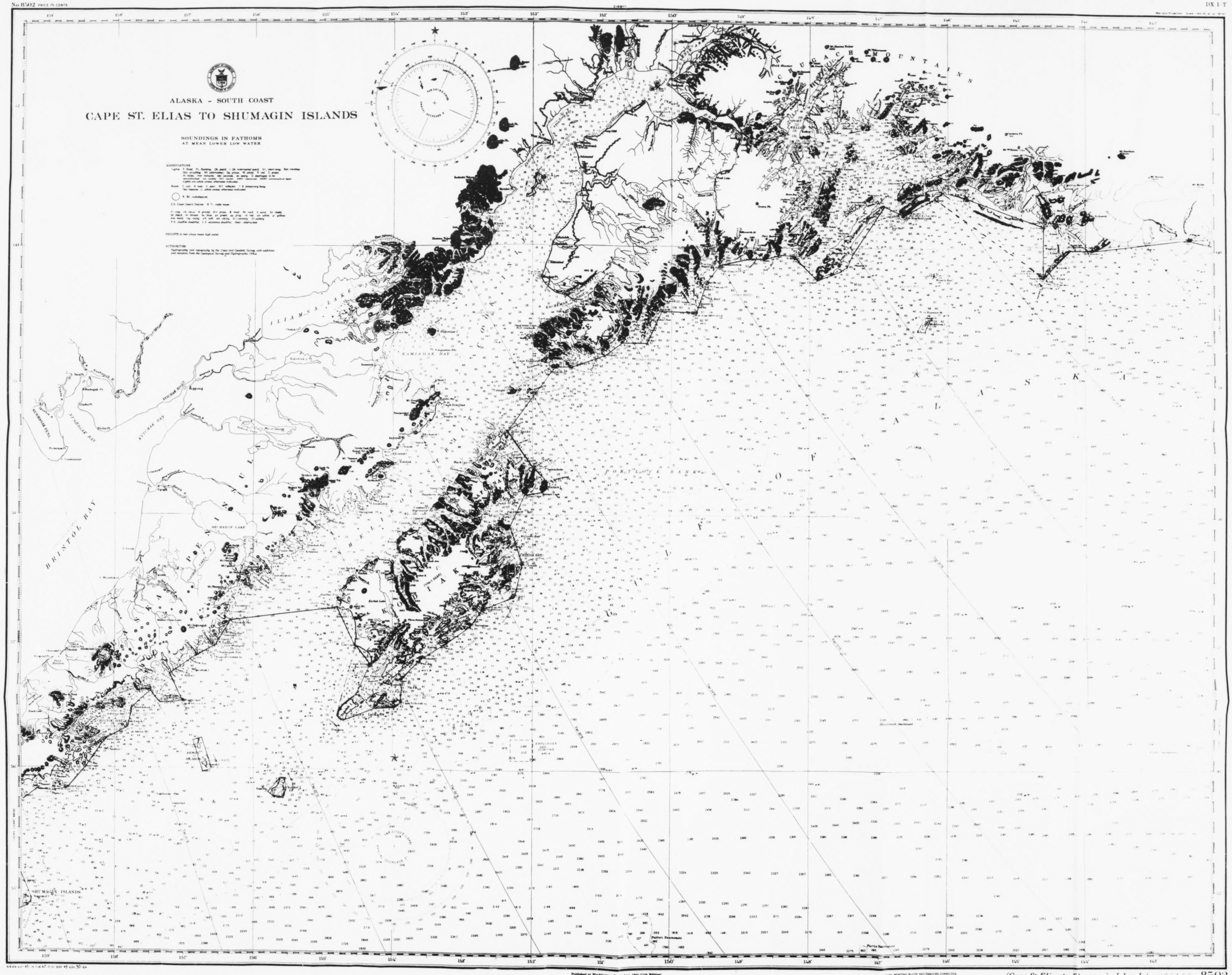

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(Print Edition 1947)
U. S. COAST AND GEODETIC SURVEY
E. F. A. Brooks, Director

LIGHTS, BEACONS, BUOYS AND DANGERS CORRECTED FOR INFORMATION RECEIVED TO THE FOLLOWING DATE

(Cape St. Elias to Shumagin Islands) USC&GS 8502

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ALASKA

DIXON ENTRANCE TO CAPE ST. ELIAS

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

(For reference navigation only)

ABBREVIATIONS

Lights: F. fixed; Fl. flashing; Gp. group; I. Oc. (interrupted quick); Iso. (isophase); Occ. (occulting); Alt. (alternating); Mo. (morse); W. white; R. red; G. green; vis. (visible); nom. (nominal); m. (metres); ft. (feet); Horiz. (horizontal); vis. (visibility); STC. (short time characteristic); LFl. (long flash); Lights are white unless otherwise noted.

Beacons: C. (can); S. (spar); PGT. (perch with target); T. (tripod); Con. (conspicuous); Horn: Diaphone; Bell; Whistle; Gong; Explosive; Siren; Reed; Trumpet; Submarine; Radio beacon; Ra. Refl. (radar reflector); Ra. Ref. (radar reflector); Ra. Tr. (radar transponder beacon); Ra. Bn. (radiobeacon).

C.G. Coast Guard Station; R.T. radio tower.

D. (day); N. (night); F. (fixed); Fl. (flash); E. (east); Ec. (eclipse); Dir. (directional); Alt. (alternating); Mo. (morse); W. (white); R. (red); G. (green); Vert. (vertical); Horiz. (horizontal); sec. (second); m. (minute); h. (hour); ft. (feet); m. (metre); M. (nautical mile); F.P. (position doubtful); I.P. (existence doubtful); Obscr. (obscured).

Heights in feet above mean high water.

Elevations in feet above mean high water.

AUTHORITIES

United States and foreign surveys.

RADIONAVIGATION SIGNALS

For schedule of operations see Light List and for changes see Notice to Mariners.

Stations

Langara Lightstation
Triple Island Lightstation (Pine Island Cottage)
Dixon Entrance Lightstation
Cape Muzon Lightstation
Cape Bazan Lightstation
Cape St. Elias Lightstation

Signal

Gp. 2 dots (0.3 second each) 2 seconds for 60 sec., about 1.50 mi.
Gp. 3 dashes (0.9 second each) 3 long dashes for 60 sec., about 1.50 mi.
Gp. 2 dots (0.3 second each) 2 seconds for 60 sec., about 1.50 mi.
Gp. 2 and 3 dashes (0.9 second each) 5 seconds for 60 sec., about 1.50 mi.
Single dashes (0.9 second each) 3 seconds for 60 sec., about 1.50 mi.
Single dashes (0.9 second each) 3 seconds for 60 sec., about 1.50 mi.
Gp. 2 dashes (0.9 second each) 4 seconds for 60 sec., about 1.50 mi.

GULF OF ALASKA

VAR 28°E (1947)
ANNUAL DECREASE 2'

VAR 27°E (1947)
ANNUAL INCREASE 3'

PROPOSED BASE LINE
FROM WHICH TO MEASURE THREE MILE LIMIT
FOR FISHERY REGULATIONS

OVERLAY FOR U.S.C.& G.S. CHART 8002
"Dixon Entrance to Cape St. Elias"

DIXON ENTRANCE

Pratt Seamount

Walker Seamount

Dickins Seamount

Chart 8002

(LONG CHART 7002)

Published at Washington, D.C., June 1966 (9th Edition)
U. S. COAST AND GEODETIC SURVEY
A. O. Gallant, Director

LIGHTS, BEACONS, BUOYS, AND DANGERS CORRECTED FOR INFORMATION RECEIVED TO DATE OF ISSUE

(Dixon Entrance to Cape St. Elias) U.S.C.&G.S. 8002
PRICE 75 CENTS

No 8502 PRICE 75 CENTS

ALASKA - SOUTH COAST

CAPE ST. ELIAS TO SHUMAGIN ISLANDS

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

ABBREVIATIONS

Lights. F. fixed, Fl. flashing, Oc. occult, I. Qk. interrupted quick, Vi. short-long, Alt. alternating, Al. alternating, Gp. group, W. white, R. red, G. green, Vis. visible, Intens. intensified, Obsc. obscured, sec. second, m. min., m. minute, hr. hour, mi. mile, int. intensity, ec. eclipse, obscured, intermittent, vis. visible, NW. northwest, NE. northeast, SE. southeast, SW. southwest, NEARD. northeastward light. Lights are white unless otherwise indicated

Beacons. C. con., B. mast, L. spar, REF. reflector, T. temporary, Sig. Sta. signal station, R. Tr. radio tower

R. Bn. radiobeacon

C.G. Coast Guard Station, R. Tr. radio tower

Colors. Bk. black, Br. brown, Bu. blue, Gn. green, Gy. gray, O. orange, R. red, W. white, Y. yellow, bnd. banded, hor. horizontal, v.tr. with vertical triangle, sq. square, Ch. checkered, D. diamond, P.D. positions doubtful, U.K. unknown doubtful. Other abbreviations

HEIGHTS in feet above mean high water

AUTHORITIES

Hydrography and topography by the Coast and Geodetic Survey with additions and revisions from the Geological Survey and Hydrographic Office

PROPOSED BASE LINE
FROM WHICH TO MEASURE THREE MILE LIMIT
FOR FISHERY REGULATIONS

OVERLAY FOR U.S.C.&G.S. CHART 8502
Cape St. Elias to Shumagin Islands

Published at Washington, D.C., Aug. 1944 (11th Edition)
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U. S. COAST AND GEODETIC SURVEY
E. F. A. Rhode, Director

LIGHTS, BEACONS, BUOYS, AND DANGERS CORRECTED FOR INFORMATION RECEIVED TO THE FOLLOWING DATE

No. 8802

DX G H 5 - G H 6

ALASKA

ALASKA PENINSULA AND ALEUTIAN ISLANDS TO SEGUAM PASS

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

CAUTION

Temporary defects in aids to navigation are not indicated on the charts except where a buoy replaces a fixed aid. See Notice to Mariners.

THE MAGNETIC ATTRACTION

LORAN
GENERAL EXPLANATION

FREQUENCY CHANNEL (pre-existing) (1950 on)

BASIC PULSE RECURRENCE RATE
(1) (2) (3) pulses per second

SPECIFIC RECURRENCE RATES assigned for station identification (following 1)
1
2

EXAMPLE 1L6

RATES ON THIS CHART
1L6 1L7

The numerical exponent with the 1 express correction indicates the recurrence rate to which it applies.

EXAMPLE 2S7

LINEAR INTERPOLATOR

PROPOSED BASE LINE
FROM WHICH TO MEASURE THREE MILE LIMIT
FOR FISHERY REGULATIONS

OVERLAY FOR U.S.C.&G.S. CHART 8802
Alaska Peninsula and Aleutian Islands to Seguam Pass

BERING SEA
ALEUTIAN ISLANDS
PACIFIC OCEAN
BRISTOL BAY
CAPE NEWENHAM
NUNIVAK ISLAND
ST. MATTHEW ISLAND
PRIBILOF ISLANDS
UNIMAK ISLAND
UNALASKA
AMUKTA I.
AMAKNAK I.
AKUTAN I.
UMNAK I.
BENNETT ISLAND
SEGUAM I.
SEGUAM PASS
CAPE SARICHEF
CAPE PROVIDENCE
CAPE KUPREANOF PT.
SHUMAGIN ISLANDS
ALEUTIAN TRENCH
KING COVE
SAND POINT
CHIGNIK
KODIAK
ALASKA PENINSULA
KUSKOKWIM BAY
NUNIVAK I.
HOOPER BAY
ST. MICHAEL
ANDREAFSKY R.
KUSKOKWIM R.
NUSHAGAK BAY
NUSHAGAK R.
TIKCHIK R.
NAKNEK R.
NAKNEK LAKE
KVICHAK R.
KVICHAK BAY
ILIAMNA LAKE
NAKNEK
KING SALMON
NAPASKIAK
NEWENHAM
DILLINGHAM
KANAKANAK
KANAKANAK R.
ALEKNAGIK
KOLIGANEK
KOLIGANEK R.
TOGIAK
TOGIAK BAY
TOGIAK R.
NEGUKTHLUK R.
NEGUKTHLUK
GOODNEWS BAY
GOODNEWS
QUINHAGAK
QUINHAGAK R.
ETOLIN POINT
ETOLIN STRAIT
HAGEMEISTER I.
SLOWPOKE
CAPE NEWENHAM
CAPE MENDENHALL
CAPE MAJOR
CAPE CORWIN
CAPE MISCHIEF
CAPE PIERCE
CAPE ROMANZOF
CAPE VANCOUVER
CAPE ST. MICHAEL
CAPE ST. MARKS
CAPE ST. ELIAS
CAPE ST. HYACINTH
CAPE ST. THADDEUS
CAPE ST. GREGORY
CAPE ST. MARY
CAPE ST. MATTHEW
CAPE ST. LAWRENCE
CAPE ST. JOHN
CAPE ST. JAMES
CAPE ST. JOSEPH

DX G-H 7+G-H-8

ALASKA - WEST COAST

BERING SEA

EASTERN PART

SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER

ABBREVIATIONS (For complete list of Symbols and Abbreviations, see C. & G. S. Chart No. 1)

Lights: F. fixed, Fl., flashing, Qk. flash., I. Qk. interrupted quick, Al., alternating, Occ. occulting, Alt. alternating, Mo. (A) morse, W. white, R. red, G. green, Vert. vertical, Hor. horizontal, Intens. intensified, Ra. radiating, Dia. diaphone, Hn. siren, Tr. trumpet, Bell, Gong, Whis. whistle, Siren, Horn, Trumpet,

B E R I N G S E A

A L E U T I A N I S L A N D S

P A C I F I C O C E A N

172° W

54° N

50° N

PROPOSED BASE LINE
FROM WHICH TO MEASURE THREE MILE LIMIT
FOR FISHERY REGULATIONS

OVERLAY FOR U.S.C.& G.S. CHART 9102
Amukta Island to Attu Island

ALASKA

ALEUTIAN ISLANDS

AMUKTA ISLAND TO ATTU ISLAND

SOUNDINGS IN FATHOMS

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E. F. A. Davis, Director

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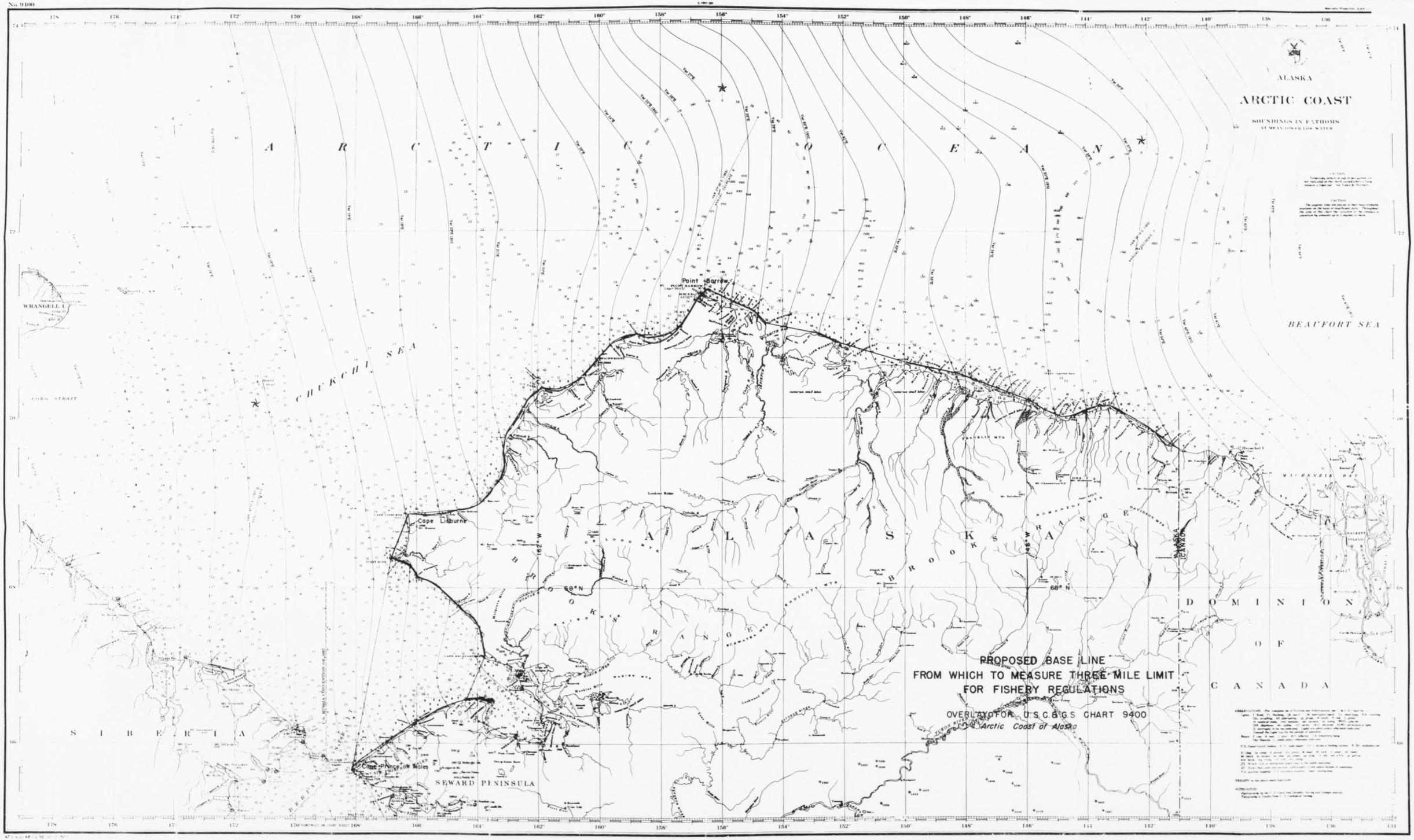

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(Arctic Coast of Alaska) USC&GS 9400
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156°
155°
154°
153°
152°
151°
150°
149°
KNIK ARM
TURNAGAIN ARM
Fire I
(see chart 8553)
Chickaloon Bay
Trading Bay
(see chart 8553)
Redoubt Bay
Kalgin I
Shelikof Str
Tuxedni Bay
Alaskan Lease March 1967
COOK INLET
KACHEMAK
BLYING SOU
ILIAMNA LAKE
Iliamna Bay
Big I
CAUTION
Hydrography in Kamishak Bay from preliminary surveys, subject to revisions
Augustine I
Augustine Rks
KAMISHAK BAY
Rukaklek L
Douglas Is
Stevenson Entrance
Point Banks
Nunalik I (see chart 8537)
Nukuk Lake
Bay of Islands
Iliuk Arm
Kinakpalik I (see chart 8553)
Chinak
Ninagluk I
Nukshak
Black Cape
Tuxedni Pt
Tuxedni Bay
Tonnuzuk I
Tonnuzuk Rks
Kamishak Bay
Kaguyak Bay
Kaguyak Rks
Kaguyak Bay
Kukak Bay
Kukak Bay
Kuk